Supreme Court, U.S.
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In The
Supreme Court Of The United States
October Term, 1995

LAKE SPEARS,
Petitioner

v.

STATE OF CONNECTICUT,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court of the State of Connecticut erred when it determined that the State of Connecticut has criminal jurisdiction over Indians on the Mashantucket Pequot Indian Reservation (a reservation belonging to a federally recognized Indian tribe) under 25 United States Code, Section 1755, when such determination was based upon erroneous interpretations of (a) federal statutes, (b) rules of statutory construction established by this and other federal courts, and (c) precedents of this and other federal courts, and when such decision is in conflict with such statutes, constructions and precedents.

PARTIES TO PROCEEDINGS BELOW

1. State of Connecticut,
   State's Attorney,
   Plaintiff-Respondent
2. Lake Spears, Defendant-Petitioner
3. State of Connecticut,
   Attorney General,
   Amicus for the Plaintiff-Respondent
4. Mashantucket Pequot Tribe,
   Amicus for the Defendant-Petitioner
5. United States Attorney for
   Connecticut,
   Amicus for the Plaintiff-Respondent

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The opinion of the Supreme Court of the State of Connecticut is reported at 234 Conn. 78 (July 4, 1995), Appendix, infra.

JURISDICTION

The judgment and opinion of the Supreme Court of the State of Connecticut was released on July 4, 1995. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1257(a).

STATUTORY PROVISIONS INVOLVED

Petitioners rely on the following:

1) MASHANTUCKET PEQUOT INDIAN LAND CLAIMS SETTLEMENT ACT, 25 U.S.C. 1751-1760: Section 1755 reads as follows:

1755. Jurisdiction over reservation Notwithstanding the provision relating to a special election in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. Section 1326)[25 USCS Section 1326], the reservation of the Tribe is declared to

be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act.

2) Public Law 280

25 USC Sections 1321-1326. Section 1321(a) reads as follows:

1321. Assumption by State of criminal jurisdiction

(a) Consent of United States; force and effect of criminal laws. The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be

determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

STATEMENT OF THE CASE

A. STATEMENT OF THE FACTS

The Petitioner, Lake Spears, is a member of the federally recognized Narragansett Indian tribe. At all relevant times herein he was a resident on, and was within the boundaries of, the reservation of the federally recognized Mashantucket Pequot Indian tribe, such reservation being located entirely within the State of Connecticut.

On or about November 29, 1992, Mr. Spears was arrested at his residence upon such reservation. The arrest was made by

State of Connecticut and local constables. Mr. Spears was charged solely with violations of the criminal laws of the State of Connecticut.

B. STATEMENT OF THE PROCEEDINGS

Upon being arrested and charged with such criminal offenses, the Petitioner filed a Motion to Dismiss with the Trial Court claiming, that under federal law, the State of Connecticut had no jurisdiction to arrest or to prosecute the Petitioner for the offenses committed on the reservation. That Motion to Dismiss was denied on August 13, 1993, by the trial court which held that 25 U.S.C. Section 1755 had conferred criminal jurisdiction upon the State of Connecticut.

The Petitioner then struck a deal with the State and entered a plea of nolo contendere to reduced charges, was sentenced therefrom, and reserved the right

to take an appeal. Such appeal was taken and on September 20, 1994, the Appellate Court of the State of Connecticut reversed the decision of the trial court, and held that the State of Connecticut had no jurisdiction to prosecute its charges, and dismissed the charges. State v. Spears, 36 Conn. App. 106 (1994).

The State of Connecticut sought and was granted a writ of certiorari to the Supreme Court of the State of Connecticut, and on July 4, 1995 that Court reversed the decision of the Appellate Court, and reinstated the conviction of the Petitioner. State v. Spears, 234 Conn. 78 (1995).

The Petitioner filed a timely Motion for a Stay of Execution which was granted by the Court.

While the case was pending before the Supreme Court of the State of Connecticut,

the Office of the Attorney General of the State of Connecticut and the United States Attorney for Connecticut sought and were granted amicus status to file briefs on behalf of the State. The Mashantucket Pequot Tribe sought and was granted amicus status to file a brief in favor of the Petitioner. None of the amicus parties were allowed to participate in oral argument.

REASONS FOR GRANTING THE PETITION

The Writ should be granted because the Connecticut Supreme Court: (a) decided a question of federal statutory law that has not been decided by this Court, and (b) decided such question in a manner contrary to law established by this and other federal courts, and contrary to rules of statutory construction established by this and other federal courts.

The outcome of this case depends upon the proper interpretation of two federal

statutes. The first of these statutes is the MASHANTUCKET PEQUOT INDIAN LAND CLAIMS SETTLEMENT ACT, 25 U.S.C. Sections 1751-1760, [hereafter referred to as the "Settlement Act"]. Section 1755 of the Settlement Act was found by the trial court to have specifically conferred criminal jurisdiction upon the State of Connecticut. The second federal statute is 25 U.S.C. Sections 1321-1326 [hereafter referred to as Public Law 280]. Public law 280 is specifically referred to in Section 1755 of the Settlement Act.

The Settlement Act has never been interpreted by this Court, and the Connecticut Supreme Court interpreted Public Law 280 in a fashion inconsistent with constructions placed on it by this court and other federal courts.

The State claimed, and the trial court agreed, that Section 1755 of the Settlement

Act was an unequivocal grant of criminal jurisdiction to the State of Connecticut (trial decision at 13). The Connecticut Supreme Court did not find that the language of 1755 was that explicit; rather, it found that "resort solely to the language of 1755 [is] inadequate to determine its clear meaning", State v. Spears, 234 Conn. 78 at 86. The Connecticut Supreme Court then went on to interpret the Statute, and in the process ignored clear and explicit federal rules of statutory construction, and ignored clear and unambiguous federal precedent.

Questions of jurisdiction over indian tribes are governed by the proposition that jurisdiction resides in the tribes themselves, and in the federal government. States do not have jurisdiction over indians in indian country unless Congress divests the tribes of jurisdiction over

themselves and then grants that jurisdiction to the state. See, Worchester v. Georgia, 31 U.S. (6 Pet.) 515 (1832) (federal law is supreme when dealing with the Indian tribes). See also, Montana v. Blackfeet Tribe of Indians, 471 U.S. 739 (1985); Washington v. Confederated Tribes and Bands of the Yakima Indian Nation, 439 U.S. 463 (1979). There is a very strong presumption of tribal sovereignty.

In general, criminal jurisdiction over minor crimes by Indians on reservations has been left to the tribes. United States v. Wheeler, 435 U.S. 313 (1978). Although Congress has granted criminal jurisdiction to various states, such grants are rare and must be express, Washington, supra. at 470-471.

When a statute that deals with indians is ambiguous, that statute must be construed in favor of the Indian tribe.

County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, 112 S.Ct. 683 (1992), Bryan v. Itasca County, 426 U.S. 373 (1976).

In the instant case, the Supreme Court of the State of Connecticut explicitly found that the plain language of Section 1755 is not sufficient to answer the question of jurisdiction; i.e. it found an ambiguity in the statute. Yet it did not resolve that statute in favor of the Indian tribe, instead it resolved the statute in favor of the State of Connecticut. Such a ruling is in direct contradiction to rulings of this Court.

It should be pointed out that in his brief to the Connecticut Supreme Court, the State's Attorney agreed that section 1755 of the Settlement Act is ambiguous "Although [the Settlement Act] could have been better drafted, a careful reading of

[the Settlement Act][ultimately leads to the conclusion that the State was granted criminal jurisdiction]" (page 16 of his brief). The whole point of the requirement that Indian statutes should be construed in favor of Indians is that a "careful reading" of the statute should not be required. The meaning of the statute should be plain; if it is not, then the statute is ambiguous. In this matter, the alleged grant of jurisdiction should be so clear and express as to leave no question about the existence of the grant. By the State of Connecticut's own admission, no such clear grant is conferred to it by the Settlement Act.

Upon reading this admission by the State's Attorney, the Supreme Court of the State of Connecticut should have found that no State criminal jurisdiction existed. It did not do so, and this matter should be

taken up by this Court to resolve this contradictory finding.

This Court should also grant this petition to rectify the State of Connecticut's misinterpretation of Public Law 280. Public Law 280 is a mechanism by which states can obtain jurisdiction over Indian reservations. Public law 280 requires that the consent of the Indian tribe be obtained before the State can obtain jurisdiction. A particular portion of the law, Section 1326 gives a specific method by which such consent is to be manifested.

Section 1755 of the Settlement Act purports to eliminate this specific method of consent. The State claimed, and the Supreme Court of Connecticut agreed, that the language of Section 1755 amounted to an outright grant of jurisdiction to the State, reasoning that since the method of

consent is eliminated, consent must be assumed.

The conclusion of the State Supreme Court is faulty for two reasons. First, the elimination of a specific method of consent does not in itself obviate the need for a consent. As so eloquently stated by the Appellate Court, "If the legislature had intended by enacting [25 U.S.C. Section 1755] to do away with the long standing policy of [the general consent requirement], it could have easily done so, citation omitted, In fact, Congress did not do so; it merely removed the specific procedure by which tribal consent must be manifested.', State v. Spears, 36 Conn. App. 106, 121 (1994).

After being modified by Section 1755 of the Settlement Act, Public Law 280 still contains a provision that consent be obtained, Section 1321. It just does not

give a specific method for the consent. The elimination of the specific method of consent did not void the requirement for consent in the first place.

Section 1755 specifically invokes Public Law 280; because of this invocation, the State Supreme Court found state criminal jurisdiction existed. The State Supreme Court stated that "The only way to harmonize [section 1321 (the general consent requirement), section 1326 (the tribal election requirement), and section 1755 of the settlement act] is to conclude that the abrogation of the only method of consent abrogated the necessity for consent." State v. Spears, 234 Conn. 78,91 (1995).

This reading of the statutes is strained and unnecessary. Grants of criminal jurisdiction to the States are possible without the invocation of Public

Law 280. A prime example is the MOHEGAN NATION OF CONNECTICUT LAND CLAIMS SETTLEMENT ACT OF 1994, Public Law 103-377. In that act, criminal jurisdiction over the Mohegan reservation in southeastern Connecticut was granted to the state of Connecticut, without a reference to Public Law 280, thus emphasizing the fact that Public Law 280 does not have to be utilized every time an outright grant of jurisdiction is made.

Given that a reference to Public Law 280 is not required for an outright grant of jurisdiction, that reference must have a purpose, Turner v. Turner, 219 Conn. 703 (1991). The only possible purpose of the reference is to require that some means of consent is required. Public Law 280 requires that a consent be given. If the grant of jurisdiction is to be unilateral (as the State claims herein), then a

reference to Public Law 280 is totally extraneous, and unwarranted. The law does not favor such a conclusion.

CONCLUSION

For all of the foregoing reasons, the Petitioner's writ of certiorari should properly be ordered granted.

Respectfully Submitted

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III

We emphasize that we do not take any position with respect to the fitness of the petitioner to gain custody of, or to obtain visitation with, the child. We hold only that the petitioner has standing to pursue his habeas corpus action for this purpose. In accordance with our precedents, the petitioner has a twofold task ahead. First, he must prove, by clear and convincing evidence, that he is the biological father of Grant. Second, the petitioner must prove to the trial court that it is in the best interests of Grant that he be awarded custody or visitation. "The trial court's ultimate decision whether to grant relief sought by the [petitioner] must be made only after a careful evaluation of all the relevant evidence presented and with primary concern for the welfare of the [child] involved." *Pi* v. *Delta*, supra, 175 Conn. 534. "What is best for the welfare of the child is still the ultimate question to be decided by the trial court." *Doe* v. *Doe*, supra, 163 Conn. 345.

The judgment of the Appellate Court is reversed, and the case is remanded to that court with direction to remand to the trial court for proceedings consistent with the previous paragraph of this opinion.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* LAKE SPEARS
(15117)

CALLAHAN, BORDEN, BERDON, NORCOTT and KATZ, Js.

The defendant, who had been convicted, following a plea of nolo contendere, of the crimes of interfering with a peace officer, assault in the third degree and disorderly conduct, appealed to the Appellate Court claiming that the trial court lacked subject matter jurisdiction over him. The defendant, a member of the Narrangansett Indian tribe, had been arrested on the Mashantucket Pequot Indian Reservation for crimes allegedly committed on the reservation. The trial court determined that

the Connecticut Indian Land Claims Settlement Act of 1983 (25 U.S.C. § 1755), expressly conferred criminal jurisdiction over the reservation to the state. The Appellate Court concluded that § 1755 of the Settlement Act did not confer criminal jurisdiction over the reservation to the state in the absence of express consent of the Mashantucket Pequot Indian tribe as required by the Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1321 [a] and 1326), and that the tribe had not consented to the state's assumption of criminal jurisdiction. The Appellate Court reversed the judgment of conviction and the state, on the granting of certification, appealed to this court. *Held* that § 1755 constituted an express grant by Congress of jurisdiction to the state over crimes committed on the reservation, and that such jurisdiction was acquired by the state upon passage of the Settlement Act without the requirement of further consent by the tribe; Congress, in enacting § 1755, abrogated § 1326, which provided the only method by which the tribe could consent to state jurisdiction and, therefore, abrogated the consent requirement contained in § 1321 and, further, the tribe's own ordinances, enacted subsequent to the Settlement Act, clearly indicate that the tribe acknowledged the state's acquisition of jurisdiction, pursuant to § 1755, over crimes committed on the reservation. Accordingly, the matter was remanded to the Appellate Court with direction to affirm the judgment of the trial court.

Argued April 21—decision released July 4, 1995

Substitute information charging the defendant with two counts of the crime of assault of a peace officer and one count each of the crimes of inciting injury to persons or property, interfering with an officer and disorderly conduct, brought to the Superior Court in the judicial district of New London, geographical area number ten, where the court, *Purtill, J.*, denied the defendant's motion to dismiss; thereafter, the state filed a substitute information charging the defendant with interfering with an officer, assault in the third degree and disorderly conduct, and the defendant was presented to the court on a plea of nolo contendere; judgment of guilty, from which the defendant appealed to the Appellate Court, *Landau, Spear* and *Cretella, Js.*, which reversed the trial court's judgment and remanded the case with direction to grant the defendant's motion to dismiss, and the state, on the granting of certification, appealed to this court. *Reversed; judgment directed.*

C. Robert Satti, Sr., special assistant state's attorney, with whom were *Sarah E. Steere*, legal intern, and, on the brief, *Kevin T. Kane*, state's attorney, for the appellant (state).

Richard D. Haviland, for the appellee (defendant).

Christopher F. Droney, United States attorney, and *Carl J. Schuman*, assistant United States attorney, filed a brief for the United States of America as amicus curiae.

Richard Blumenthal, attorney general, and *Susan Quinn Cobb*, assistant attorney general, filed a brief for the attorney general as amicus curiae.

Jackson T. King, Jr., *Patrice H. Kunesh* and *Henry J. Sockbeson* filed a brief for the Mashantucket Pequot Tribe as amicus curiae.

CALLAHAN, J. The sole issue in this certified appeal is whether the state of Connecticut has jurisdiction, pursuant to § 1755 of title 25 of the United States Code, over crimes committed on the Mashantucket Pequot Indian Reservation (reservation) in Ledyard. On November 29, 1991, the defendant, Lake Spears, was arrested by a Connecticut state trooper who had responded to an anonymous telephone call alerting the police to a disturbance at the defendant's residence. The defendant resided at 8 Elizabeth George Drive, on the reservation. Subsequent to his arrest, the defendant was charged in an information in the Superior Court with two counts of assault of an officer in violation of General Statutes § 53a-167c, and one count each of inciting injury to persons or property in violation of General Statutes § 53a-179a, disorderly conduct in violation of General Statutes § 53a-182 and interfering with an officer in violation of General Statutes § 53a-167a.

On October 13, 1992, the defendant moved to dismiss the information, claiming that the state lacked jurisdiction over crimes committed by or against Indians on the reservation.[1] The parties agreed that the Mashantucket Pequot Indian tribe (tribe) is a federally recognized tribe that owns and occupies the reservation encompassing approximately 1800 acres in Ledyard. The defendant is a member of the Narrangansett Indian tribe, not the Mashantucket Pequot Indian tribe.[2]

The trial court denied the motion to dismiss, concluding that the Connecticut Indian Land Claims Settlement Act of 1983 (Settlement Act); 25 U.S.C. §§ 1751 through 1760; conferred criminal jurisdiction over the reservation to the state. Thereafter, the defendant entered pleas of nolo contendere to all counts of a substituted information that charged him, in three counts, with: (1) interfering with an officer in violation of § 53a-167a; (2) assault in the third degree in violation of General Statutes § 53a-61; and (3) disorderly conduct in violation of § 53a-182. The defendant conditioned the entry of his pleas on his right to appeal from the court's denial of his motion to dismiss. See General Statutes § 54-94a; Practice Book § 4003.[3] The trial court rendered a judgment of conviction on all three counts.

[1] The trial court granted the Mashantucket Pequot Indian tribe's motion to file a brief as amicus curiae regarding the motion to dismiss. The tribe claimed that the issue in this case would have a lasting effect on its relationship with the state. The trial court also granted the United States amicus curiae status. Before this court, the tribe, the United States and the state attorney general filed briefs as amici curiae.

[2] All parties agree that the fact that the defendant is not a member of the Mashantucket Pequot Indian tribe has no legal significance in this appeal.

[3] General Statutes § 54-94a provides: "CONDITIONAL NOLO CONTENDERE PLEA. APPEAL OF DENIAL OF MOTION TO SUPPRESS OR DISMISS. When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's motion to suppress evidence based on an unreasonable

Thereafter, the defendant appealed to the Appellate Court from the judgment of conviction, challenging the trial court's denial of his motion to dismiss. The Appellate Court reversed the judgment of conviction, concluding that the Settlement Act did not confer criminal jurisdiction over the reservation to the state in the

search or seizure, motion to suppress statements and evidence based on the involuntariness of a statement or motion to dismiss, the defendant after the imposition of sentence may file an appeal within the time prescribed by law. The issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied the motion to suppress or the motion to dismiss. A plea of nolo contendere by a defendant under this section shall not constitute a waiver by the defendant of nonjurisdictional defects in the criminal prosecution."

Practice Book § 4003 provides: "(a) When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's motion to suppress evidence based on an unreasonable search or seizure or motion to dismiss, the defendant after the imposition of sentence may file an appeal within the time prescribed by law. The issue to be considered in such appeal shall be limited to whether it was proper for the court to have denied the motion to suppress or the motion to dismiss. A plea of nolo contendere by a defendant under this section shall not constitute a waiver by the defendant of nonjurisdictional defects in the criminal prosecution. The court shall not accept a nolo contendere plea pursuant to this subsection where the denial of the motion to suppress would not have a significant impact upon the disposition of the case in the trial court. The court shall also decline to accept such a nolo contendere plea where the record available for review of the denial of the motion to suppress or motion to dismiss is inadequate for appellate review of the court's determination thereof.

"(b) With the approval of the court, after a hearing to consider any objections thereto, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any motion made prior to the close of evidence, which motion must be specified in such written reservation. If the defendant prevails on appeal, the judgment shall be set aside and the defendant shall be allowed to withdraw the conditional plea of nolo contendere after the case has been remanded to the trial court. The court shall not accept a plea of guilty or nolo contendere pursuant to this subsection where the adverse determination of the specified motion would not have a significant impact on the disposition of the case in the trial court. The court shall also decline to accept such a nolo contendere or guilty plea where the record available for review of the ruling upon the specified motion is inadequate for appellate review of the court's determination thereof."

absence of the express consent of the tribe. *State* v. *Spears*, 36 Conn. App. 106, 122–23, 647 A.2d 1054 (1994). The Appellate Court, accordingly, remanded the case to the trial court with direction to grant the defendant's motion to dismiss. We granted the state's petition for certification limited to the following issue: "Under the circumstances of this case, did the Appellate Court properly conclude that the state of Connecticut does not have jurisdiction over crimes allegedly committed by the defendant on the Mashantucket Pequot Indian Reservation in Ledyard?" *State* v. *Spears*, 231 Conn. 936, 650 A.2d 173 (1994). We reverse the judgment of the Appellate Court.

On appeal, the state claims that, although the Settlement Act granted federal recognition to the tribe, it also granted jurisdiction over crimes committed on the reservation to the state. See 25 U.S.C. §§ 1758 (a) and 1755. The state contends that § 1755 constituted an express grant by Congress of criminal jurisdiction over the reservation to the state, and that jurisdiction was vested in the state upon the passage of the Settlement Act, without requiring any further consent by the tribe. We agree.

The tribe is "the sole successor in interest to the aboriginal entity known as the Western Pequot Tribe which years ago claimed aboriginal title to certain lands in the State of Connecticut." 25 U.S.C. § 1751 (e). In 1976, the tribe brought a civil action claiming title to certain public and private lands in Ledyard, claiming that the lands were the property of the tribe and had been appropriated wrongfully from the tribe in violation of the constitution and laws of the United States. *Mashantucket Pequot Tribe* v. *McGuigan*, 626 F. Sup. 245, 246 (D. Conn. 1986). The Settlement Act reflects an agreement reached by the parties to the litigation to resolve the tribe's claims and to eliminate the cloud on titles to land in Ledyard resulting from those claims.

25 U.S.C. § 1751; *Mashantucket Pequot Tribe* v. *McGuigan*, supra, 246. The Mashantucket Pequot Tribal Council was represented in the action as well as in the hearings before Congress, and manifested its consent to the terms of the Settlement Act. 25 U.S.C. § 1751 (e).

Section 6 of the Settlement Act, which is codified at 25 U.S.C. § 1755, provides: "STATE JURISDICTION OVER RESERVATION. Notwithstanding the provision relating to a special election in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326) . . . the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act [25 U.S.C. § 1321]." The issue of whether § 6 of the Settlement Act conferred criminal jurisdiction to the state without requiring further consent of the tribe is one of first impression.[4]

At the outset, we note that criminal offenses committed by or against Indians in "Indian country"[5]

[4] In *Mashantucket Pequot Tribe* v. *McGuigan*, supra, 626 F. Sup. 245, the United States District Court for the District of Connecticut considered whether Connecticut's bingo laws were enforceable on the reservation. The court, in considering the effect of § 1755, stated: "While Public Law 98-134 eliminates the consent election provided in 25 U.S.C. § 1326, it may have created an anomaly by the fact that it does not eliminate the consent requirement of 25 U.S.C. § 1321." Id., 248. The court, however, expressly reserved the question of whether the state had acquired criminal jurisdiction over the reservation because it concluded that the bingo laws were not criminal laws, but rather were "civil/regulatory." In *Schaghticoke Indians of Kent, Connecticut, Inc.* v. *Potter*, 217 Conn. 612, 615 n.3, 587 A.2d 139 (1991), this court misstated the holding of *McGuigan* in dicta.

[5] "Indian country" is defined in § 1151 of title 18 of the United States Code, which provides in relevant part: "Except as otherwise provided in sections 1154 and 1156 of this title, the term 'Indian country' . . . means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . . ." As a threshold matter, we note that the tribe is a federally recognized Indian tribe; 25 U.S.C. § 1758; and occupies a reservation of land in Ledyard pursuant to General Statutes § 47-63. The reservation is, therefore, Indian country. See also 25 U.S.C. § 1755.

ordinarily "have been subject only to federal or tribal laws, *Moe* v. *Salish & Kootenai Tribes*, 425 U.S. 463, 96 S. Ct. 1634, 48 L. Ed. 2d 96 [1976], except where Congress in the exercise of its plenary and exclusive power over Indian affairs has 'expressly provided that State laws shall apply.' *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. 164, 170–71, 93 S. Ct. 1257, 36 L. Ed. 2d 129 [1973]." *Washington* v. *Yakima Indian Nation*, 439 U.S. 463, 470–71, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979); see *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515, 8 L. Ed. 483 (1832).[6] We also recognize that "ambiguities in legislation affecting retained tribal sovereignty are to be construed in favor of the [tribe]." *Washington* v. *Yakima Indian Nation*, supra, 484; see also *Bryan* v. *Itasca County*, 426 U.S. 373, 392, 96 S. Ct. 2102, 48 L. Ed. 2d 710 (1976) (" 'statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians' "). We, however, must effectuate the expressed Congressional intent. See *Negonsott* v. *Samuels*, U.S. , 113 S. Ct. 1119, 1122, 122 L. Ed. 2d 457 (1993) (" '[o]ur task is to give effect to the will of Congress' "); *Gonsalves* v. *West*

[6] Congress has conferred on the federal courts special criminal jurisdiction over offenses committed in Indian country. See *Negonsott* v. *Samuels*, U.S. , 113 S. Ct. 1119, 1121–22, 122 L. Ed. 2d 457 (1993). The Indian Country Crimes Act, codified at 18 U.S.C. § 1152, applies to crimes committed by non-Indians against Indians and to crimes committed by Indians against non-Indians not encompassed by other statutes or prosecuted in a tribal court. See *Williams* v. *United States*, 327 U.S. 711, 714, 66 S. Ct. 778, 90 L. Ed. 962 (1946); F. Cohen, Handbook of Federal Indian Law (1982 Ed.) pp. 287–300. The Indian Major Crimes Act establishes as federal crimes certain felonies committed by any Indian in Indian country "against the person or property of another Indian or other person . . . ." 18 U.S.C. §§ 1153, 3242. *In the absence of an express grant of state jurisdiction by Congress*, state jurisdiction within Indian country "is limited to crimes by non-Indians against non-Indians . . . and victimless crimes by non-Indians." *Solem* v. *Bartlett*, 465 U.S. 463, 465 n.2, 104 S. Ct. 1161, 79 L. Ed. 2d 443, reh. denied, 466 U.S. 948, 104 S. Ct. 2148, 80 L. Ed. 2d 535 (1984).

Haven, 232 Conn. 17, 21, 653 A.2d 156 (1995) (" ' "[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature" ' ").

Our analysis of the statutes reflecting that legislative intent is guided by well established principles of statutory construction. "Statutory construction is a question of law and therefore our review is plenary. *North Haven* v. *Planning & Zoning Commission*, 220 Conn. 556, 561, 600 A.2d 1004 (1991)." *Davis* v. *Norwich*, 232 Conn. 311, 317, 654 A.2d 1221 (1995). Ordinarily, if the language of a statute is plain and unambiguous, we need look no further than the words themselves because we assume that the language expresses the legislature's intent. *United States* v. *Albertini*, 472 U.S. 675, 680, 105 S. Ct. 2897, 86 L. Ed. 2d 536 (1985); *Frillici* v. *Westport*, 231 Conn. 418, 430, 650 A.2d 557 (1994); *West Hartford Interfaith Coalition, Inc.* v. *Town Council*, 228 Conn. 498, 508, 636 A.2d 1342 (1994); *American Universal Ins. Co.* v. *DelGreco*, 205 Conn. 178, 193, 530 A.2d 171 (1987). As a threshold matter, therefore, we consider whether § 1755 is ambiguous. Although § 1755 explicitly states that "the reservation of the Tribe is declared to be Indian country subject to State jurisdiction," it also compels us to refer to § 401 (25 U.S.C. § 1321) and to § 406 (25 U.S.C. § 1326) of the Indian Civil Rights Act of 1968 in order to ascertain the parameters and the true meaning of the jurisdictional grant. We conclude, therefore, that the reference in § 1755 to certain provisions of the separate Indian Civil Rights Act renders resort solely to the language of § 1755 inadequate to determine its clear meaning.

When we engage in statutory interpretation, "[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . *Fleming* v. *Garnett*, 231 Conn. 77, 91-92, 646 A.2d 1308 (1994); *State* v. *Metz*, 230 Conn. 400, 409, 645 A.2d 965

(1994); see also *Carpenteri-Waddington, Inc.* v. *Commissioner of Revenue Services*, 231 Conn. 355, 362, 650 A.2d 147 (1994)." (Internal quotation marks omitted.) *Gonsalves* v. *West Haven*, supra, 232 Conn. 21; see *Negonsott* v. *Samuels*, supra, 113 S. Ct. 1122-23. "In seeking to discern that intent, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . . *Ambroise* v. *William Raveis Real Estate, Inc.*, [226 Conn. 757, 764, 628 A.2d 1303 (1993)]; see *Glastonbury Volunteer Ambulance Assn., Inc.* v. *Freedom of Information Commission*, 227 Conn. 848, 852-57, 633 A.2d 305 (1993). . . . *State* v. *Metz*, [supra, 409]; *Fleming* v. *Garnett*, [supra, 91]." (Citations omitted; internal quotation marks omitted.) *Frillici* v. *Westport*, supra, 231 Conn. 431-32; *Cheshire Mortgage Service, Inc.* v. *Montes*, 223 Conn. 80, 96, 612 A.2d 1130 (1992); see *Oklahoma* v. *New Mexico*, 501 U.S. 221, 235 n.5, 111 S. Ct. 2281, 115 L. Ed. 2d 207 (1991) ("we repeatedly have looked to legislative history and other extrinsic material when required to interpret a statute which is ambiguous"); *Green* v. *Bock Laundry Machine Co.*, 490 U.S. 504, 511, 109 S. Ct. 1981, 104 L. Ed. 2d 557 (1989); *Pierce* v. *Underwood*, 487 U.S. 552, 564-65, 108 S. Ct. 2541, 101 L. Ed. 2d 490 (1988); *Blum* v. *Stenson*, 465 U.S. 886, 896, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984).

Section 1321 (a) of title 25 of the United States Code provides: "The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, *with the consent of the Indian tribe occupying the particular Indian country or part thereof which*

could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State *to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State*, and the criminal laws of such State *shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.*" (Emphasis added.) Section 1326 of title 25 of the United States Code provides in relevant part: "State jurisdiction acquired pursuant to this title . . . with respect to criminal offenses . . . shall be applicable in Indian country *only where the enrolled Indians* within the affected area of such Indian country *accept such jurisdiction by a majority vote of the adult Indians voting at a special election* held for that purpose. . . ." (Emphasis added.)

The issue in this appeal boils down to the question of whether, as the defendant argues, an abstract consent requirement expressed in § 1321 survived even though Congress in § 1755 expressly eliminated the mechanism of a special election, which is set forth in § 1326, by which tribes must manifest their consent to state jurisdiction. Section 1755 provides for state jurisdiction over crimes committed on the reservation "[n]otwithstanding the provision relating to a special election in section 406 of the Act of April 11, 1968 [§ 1326]." In order to discern the intent of Congress in enacting § 1755, we need comment upon the Indian Civil Rights Act of April 11, 1968, which was preceded by Public Law 83-280. See Public Law 83-280, 67 Stat. 588–90 (1953), codified, as amended, at 18 U.S.C. § 1162 and 28 U.S.C. § 1360.

Public Law 83-280, enacted in 1953, was the first federal jurisdictional statute of general applicability to Indian reservation lands; *Bryan* v. *Itasca County*, supra, 426 U.S. 379; and "the primary expression of

federal policy governing the assumption by States of civil and criminal jurisdiction over the Indian Nations." *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Engineering*, 476 U.S. 877, 884, 106 S. Ct. 2305, 90 L. Ed. 2d 881 (1986). Public Law 83-280 granted criminal jurisdiction to five states, not including Connecticut,[7] over Indian country in those five states.[8] It also provided an option to the remaining states containing Indian country to assume jurisdiction over crimes committed in Indian country "without consulting with or securing the consent of the tribes that would be affected." *Washington* v. *Yakima Indian Nation*, supra, 439 U.S. 473–74. The primary purpose for enacting Public Law 83-280 was to address "the 'problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement.' " Id., 471.

In 1968, Congress enacted title IV of the Indian Civil Rights Act, which is codified at 25 U.S.C. §§ 1321 through 1326. Title IV requires that all subsequent assertions of jurisdiction by the states be preceded by the consent of the affected tribes. "The impetus for the addition of a consent requirement in the 1968 amendments was congressional dissatisfaction with the involuntary extension of state jurisdiction over Indians who did not feel they were ready to accept such jurisdiction, or who felt threatened by it." *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Engineering*, supra, 476 U.S. 892, citing S. Rep. No. 721, 90th Cong., 1st Sess. 32 (1967).

The United States Supreme Court has determined that the special election requirement in § 1326 is the

[7] At the time that Public Law 83-280 was enacted, there were no federally recognized Indian tribes in Connecticut.

[8] The five states given immediate jurisdiction were California, Minnesota, Nebraska, Oregon and Wisconsin. Alaska was added to this group in 1958. See 18 U.S.C. § 1162; 28 U.S.C. § 1360.

only procedure by which the tribal consent in § 1321 may be manifested. "We think the meaning of these provisions is clear: the tribal consent that is prerequisite to the assumption of state jurisdiction under the provisions of Title IV of the Act *must be manifested* by majority vote of the enrolled Indians within the affected area of Indian country." (Emphasis added.) *Kennerly* v. *District Court of Montana*, 400 U.S. 423, 429, 91 S. Ct. 480, 27 L. Ed. 2d 507 (1971), citing 114 Cong. Rec., S394 (1968) ("[t]his title . . . authorizes States to assert civil and criminal jurisdiction in Indian country only after acquiring the consent of the tribes in the States by referendum of all reservated Indians"). It follows, then, that the nullification by § 1755 of the special election requirement, the sole means by which Indian tribes may consent to state jurisdiction, accompanied by an express grant of jurisdiction to the state, effectively nullifies the tribal consent requirement in § 1321.

"We presume that the legislature is aware of the judicial construction placed upon its enactments. *Cappellino* v. *Cheshire*, 226 Conn. 569, 576, 628 A.2d 595 (1993); *Lumbermens Mutual Casualty Co.* v. *Huntley*, 223 Conn. 22, 30, 610 A.2d 1292 (1992)." *State* v. *Crowell*, 228 Conn. 393, 401, 636 A.2d 804 (1994); see *Fair Cadillac-Oldsmobile Isuzu Partnership* v. *Bailey*, 229 Conn. 312, 321, 640 A.2d 101 (1994) ("[W]e presume that the legislature has 'knowledge of this long-standing construction which this court has given to the objective and purpose of legislation in this field.' *Klapproth* v. *Turner*, 156 Conn. 276, 279, 240 A.2d 886 [1968]"); see also *Rodriguez* v. *United States*, 480 U.S. 522, 525, 107 S. Ct. 1391, 94 L. Ed. 2d 533 (1987) ("Congress acted—as it is presumed to act . . . with full awareness of the well-established judicial interpretation [of the statute]" [citation omitted]). Section 1755, therefore, must be interpreted in light of the United

State Supreme Court's interpretation of §§ 1321 and 1326. Moreover, "[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole. Thus, it is not proper to confine interpretation to the one section to be construed." 2A J. Sutherland, Statutory Construction (5th Ed. 1992) § 46.05, p. 103; see also *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U.S. , 114 S. Ct. 1992, 2002, 128 L. Ed. 2d 842 (1994) ("courts should construe statutes to foster harmony with other statutory and constitutional law").

We must interpret § 1755 so that it, along with §§ 1321 and 1326, constitutes one consistent body of law. Section 1321 provides that the affected tribe must indicate consent to state criminal jurisdiction. Section 1321, however, does not provide a procedure for the tribe to manifest that consent. Section 1326, on the other hand, provides the *one* method authorized by Congress by which the tribe may consent to state jurisdiction. The only way to harmonize these provisions with each other and with § 1755 is to conclude that the abrogation of the only method of consent abrogated the necessity for consent.

The defendant argues, however, that by abrogating the requirement for a special election, Congress in § 1755 did not intend to confer criminal jurisdiction to the state without the necessity for tribal consent. Instead, the defendant argues that Congress intended to recognize the increasing sophistication of Indian tribes and to allow the Mashantucket Pequot tribe greater freedom by permitting it to manifest its consent to jurisdiction by some undelineated method or methods. This interpretation of congressional intent is flawed. It is illogical to place both the state and the tribe in the predicament of guessing at the proper

manifestation of consent. See, e.g., *Golden Hill Paugussett Tribe of Indians* v. *Southbury*, 231 Conn. 563, 651 A.2d 1246 (1995) (dispute between tribal chief and tribal council regarding authority to bring action on behalf of tribe resulting in dismissal). Such an interpretation would lead to the unlikely result that Congress intended that some undisclosed method of signaling consent should be utilized by the Mashantucket Pequot tribe, but not by other Indian tribes, even though there has been but a single recognized method since 1968 by which all Indian tribes may declare their consent to state jurisdiction.

"[P]rinciples of statutory construction . . . require us to construe a statute in a manner that will not thwart its intended purpose or lead to absurd results. *Turner* v. *Turner*, 219 Conn. 703, 712, 595 A.2d 297 (1991). We must avoid a construction that fails to attain a rational and sensible result that bears directly on the purpose the legislature sought to achieve. *Peck* v. *Jacquemin*, 196 Conn. 53, 63–64, 491 A.2d 1043 (1985). [*Turner* v. *Turner*, supra,] 713. *Scrapchansky* v. *Plainfield*, 226 Conn. 446, 453, 627 A.2d 1329 (1993); see also *State* v. *Johnson*, [227 Conn. 534, 542, 630 A.2d 1059 (1993)]; *Fairfield Plumbing & Heating Supply Corp.* v. *Kosa*, 220 Conn. 643, 650–51, 600 A.2d 1 (1991)." (Internal quotation marks omitted.) *Concept Associates, Ltd.* v. *Board of Tax Review*, 229 Conn. 618, 624, 642 A.2d 1186 (1994). "It is also a rule of statutory construction that those who promulgate statutes or rules do not intend to promulgate statutes or rules that lead to absurd consequences or bizarre results. . . . *State* v. *Siano*, 216 Conn. 273, 278, 579 A.2d 79 (1990), and cases cited therein." *State* v. *Harrison*, 228 Conn. 758, 765, 638 A.2d 601 (1994); see *United States* v. *Rutherford*, 442 U.S. 544, 552, 99 S. Ct. 2470, 61 L. Ed. 2d 68 (1979). Without running afoul of the accepted rules of statutory construction, we cannot construe the

immediate, definitive grant of state jurisdiction in § 1755 to be subject to subsequent tribal consent, the method of declaring which is unknown to Congress, the state and the tribe.

The defendant's proposed interpretation of § 1755 also would render everything in the statute, except for the elimination of the special election requirement of § 1326, superfluous. Section 1755 provides that "the reservation . . . is declared to be Indian country subject to State jurisdiction . . . ." If, as the defendant argues, the consent of the tribe was still necessary to confer criminal jurisdiction on the state after the passage of the Settlement Act, this language would amount to nothing more than a manifestation of Congress' consent to state jurisdiction with the consent of the tribe. In § 1321, Congress, however, already had manifested its express consent to any state to assume jurisdiction over Indian country with tribal consent; consequently, no purpose would be served by doing so again in § 1755. Our conclusion, therefore, that the state automatically assumed criminal jurisdiction over the reservation upon passage of the Settlement Act, is the only interpretation of the statutory scheme which is not redundant and which gives meaning to every clause of § 1755.

"It is a basic tenet of statutory construction that the legislature 'did not intend to enact meaningless provisions.' *Turner* v. *Turner*, [supra, 219 Conn. 713]. Accordingly, care must be taken to effectuate all provisions of the statute. See *Pintavalle* v. *Valkanos*, 216 Conn. 412, 418, 581 A.2d 1050 (1990) ('[a] statute should be read as a whole and interpreted so as to give effect to all of its provisions'); *Hopkins* v. *Pac*, 180 Conn. 474, 476, 429 A.2d 952 (1980) (it is a 'well established principle that statutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant')." *Bridgeport Hospital* v. *Com-*

mission on Human Rights & Opportunities, 232 Conn. 91, 100–101, 653 A.2d 782 (1995); see also *Negonsott* v. *Samuels*, supra, 113 S. Ct. 1123 ("[o]ur reading of the . . . Act is the only one which gives effect 'to every clause and word of [the] statute' "); 2A J. Sutherland, supra, § 46.06, pp. 119–20.

The legislative history of the Settlement Act also persuades us that the intent of Congress in enacting § 1755 was to confer criminal jurisdiction to the state without the requirement of tribal consent. As stated in both the Senate and the House of Representative Reports, "[s]ection 6 [§ 1755] provides that the reservation . . . is subject to the full extent of State jurisdiction . . . as defined in title IV of the Act of April 11, 1968, the Indian Civil Rights Act. The Tribe's reservation *has this status* notwithstanding section 406 of the Indian Civil Rights Act [§ 1326] which requires a majority vote of the enrolled members of an Indian tribe before a state may assume jurisdiction over that tribe." (Emphasis added.) S. Rep. No. 222, 98th Cong., 1st Sess. 16 (1983); see also H.R. Rep. No. 43, 98th Cong., 1st Sess. 10 (1983). The reservation would not obtain the "status" of being under state jurisdiction upon the enactment of § 1755 if Congress had intended that subsequent tribal consent was required to confer jurisdiction to the state.

Interestingly, the tribe's own ordinances, enacted subsequent to the Settlement Act, manifest the tribe's acceptance of state jurisdiction. The ordinances clearly indicate that the tribe acknowledged the state's acquisition of jurisdiction, pursuant to § 1755, over crimes committed on the reservation. The Mashantucket Pequot Tribal Law and Order Code, enacted November 20, 1991, only nine days before the defendant was arrested, provides several examples. Section 1, entitled "Offenses against the Tribe," provides: "(a) *Violations of State criminal laws*: Every offense against those

criminal laws of the State of Connecticut *which are made applicable to the Mashantucket Pequot Reservation by section 6 of the Mashantucket Pequot Indian Claims Settlement Act, Pub. L. 98-134, 25 U.S.C. § 1755, and 25 U.S.C. § 1321,* shall be an offense against the law of the Mashantucket Pequot Tribe and the Mashantucket Pequot Tribe hereby adopts and incorporates by reference, as the law of the Mashantucket Pequot Tribe, all provisions of such criminal laws of the State of Connecticut *which are made applicable to the Mashantucket Pequot Reservation by Section 6 of the Mashantucket Pequot Indian Claims Settlement Act, Pub. L. 98-134, 25 U.S.C. § 1755, and 25 U.S.C. § 1321.*" (Emphasis added.) Mashantucket Pequot Tribal Ordinance No. 112091-01.

Section 5 of the Mashantucket Tribal Law and Order Code provides in relevant part: "*Concurrent jurisdiction over State offenses.* The Mashantucket Pequot Tribal Police Department shall exercise *concurrent* authority with law enforcement officers of the State of Connecticut to make arrests for violations of criminal laws of the State *which are made applicable to the Mashantucket Pequot Reservation by Section 6 of the Mashantucket Pequot Indian Claims Settlement Act, Pub. L. 98-134, 25 U.S.C. § 1755, and 25 U.S.C. § 1321*; provided, however, that persons arrested by officers of the Mashantucket Pequot Tribal Police Department for such violations of criminal laws of the State of Connecticut shall be transferred as promptly as may be feasible to the jurisdiction of the State law enforcement officers and the Mashantucket Pequot Tribal Police Department shall comply with all reasonable requirements of State law enforcement officers and agencies in order to assist in the prosecution of such offenders under the laws of the State of Connecticut." (Emphasis added.) Mashantucket Pequot Tribal Ordinance No. 112091-01.

These provisions not only reflect the tribe's acknowledgement that the state had acquired criminal jurisdiction over the reservation pursuant to § 1755, but also evince the tribe's apparent willingness to cooperate with the state's law enforcement authorities. Because we conclude that tribal consent to state jurisdiction was not required pursuant to § 1755, we need not consider whether these tribal ordinances act as subsequent ratification of state jurisdiction. They do, however, illustrate that the tribe understood the passage of § 1755 to confer criminal jurisdiction on the state.[9]

Finally, the Gaming Compact, ordered by the United States Secretary of the Interior as a result of the Indian Gaming Regulatory Act of 1988; see *Mashantucket Pequot Tribe* v. *Connecticut*, 737 F. Sup. 169 (D. Conn.), aff'd, 913 F.2d 1024 (2d Cir. 1990); 56 Fed. Reg. 24,996 (1991); provides that "[t]he State of Connecticut shall also have jurisdiction to enforce all other criminal laws of the State which are consistent with the provisions of this Compact on the Reservation, *including enforcement within the gaming facilities.*" (Emphasis added.) The compact assumes that the state had acquired criminal jurisdiction over the entire reservation and only emphasizes that the jurisdiction includes the gaming facilities. Additionally, the Mashantucket Pequot Gaming Commission stated: "The State Law Enforcement Agency (Connecticut State Police) *shall have jurisdiction to enforce all criminal laws on the reservation, including enforcement within the gaming facility.*" (Emphasis added.) Mashantucket Pequot Gaming Commission: Regulatory Responsibilities and Requirements of the Tribal Gaming Commission, State Gaming Agency and State Law Enforcement Agency (Novem-

[9] Indeed, from the time of the enactment of the Settlement Act in 1983, when the tribe gained federal recognition; see 25 U.S.C. § 1758; until 1990, the tribe had neither a police force nor a court system.

ber 14, 1991). The term "including" presupposes the existence of state jurisdiction over the entire reservation.

We conclude that the state of Connecticut acquired jurisdiction over crimes committed on the Mashantucket Pequot Indian Reservation by the enactment of § 1755 of title 25 of the United States Code.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion the other justices concurred.

STATE OF CONNECTICUT *v.* FREDERICK CONN (15109)

PETERS, C. J., and CALLAHAN, BERDON, NORCOTT and PALMER, Js.

Convicted of the crime of felony murder, the defendant appealed to this court claiming that the trial court improperly denied his motion to unseal his arrest warrant and its supporting affidavits prior to his probable cause hearing. The warrant and affidavits had been sealed pursuant to the rules of practice (§ 593A) because the investigation of the crime was ongoing and because minors were involved. In making his motion the defendant relied on the portion of § 593A that provides that an order to seal the supporting affidavits cannot limit their disclosure to the attorney for the accused. The trial court, however, determined that the motion to unseal was a motion for discovery, which, by statute (§ 54-46a), is not permitted in connection with a probable cause hearing. The defendant also claimed that the state destroyed potentially exculpatory evidence in violation of his federal due process rights by failing to compare in a timely manner hairs taken from a baseball cap and a T-shirt found at the crime scene with a sample of his hair and that the trial court improperly refused to instruct the jury that an adverse inference could be drawn from the delay in testing. *Held:*

1. There was no merit to the defendant's claim that the delay in testing of the hairs deprived him of his federal constitutional right to due process; even if, as the defendant claimed, the evidence was functionally destroyed by the delay, the evidence was only potentially exculpatory, and the defendant conceded that there was no bad faith on the part of the police.
2. Because it would lead to a bizarre result if a defendant accused of a crime not punishable by death or life imprisonment would be entitled by § 593A

ties never merged; the plaintiff has the right to an opportunity to attempt to demonstrate hardship on the basis of his property alone, without reference to the Johnson lot.

Similarly, the plaintiff never received a hearing on his application for a variance from the access requirement without reference to the Johnson lot. The board based its ruling on the application for access variance at least in part on its assumption that the hardship was self-created due to the merger of the plaintiff's lot and the Johnson lot. Again, the plaintiff is entitled to an opportunity to demonstrate that he will suffer hardship by the application of the access requirements to his property alone.

The judgment is reversed and the case is remanded with direction to render judgment remanding the case to the Westport zoning board of appeals for a hearing on whether the plaintiff's lot, standing alone, warrants a variance from the application of the shape and access requirements.

In this opinion the other judges concurred.

STATE OF CONNECTICUT *v.* LAKE SPEARS
(12908)

LANDAU, SPEAR and CRETELLA, Js.

Convicted, on a conditional plea of nolo contendere, of the crimes of interfering with a peace officer, assault in the third degree and disorderly conduct, the defendant appealed to this court claiming that the trial court lacked subject matter jurisdiction over him. The defendant, a member of the Narragansett Indian tribe, had been arrested on the reservation of the Mashantucket Pequot Indians for crimes allegedly committed on the reservation. *Held* that the trial court improperly determined that it had criminal jurisdiction over the defendant; the Connecticut Indian Land Claims Settlement Act of 1983 (25 U.S.C. § 1775) does not vest the state with criminal jurisdiction without tribal consent, as

required by the Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1321 [a] and 1326), and the plain language of the Mashantucket Pequot ordinances expressly denies such consent.

Argued March 28—decision released September 20, 1994

Substitute information charging the defendant with two counts of the crime of assault of a peace officer, and with the crimes of inciting injury to person or property, interfering with a peace officer and disorderly conduct, brought to the Superior Court in the judicial district of New London, geographical area number ten, where the court, *Purtill, J.*, denied the defendant's motion to dismiss; thereafter, the defendant was presented to the court on a plea of nolo contendere to the charges of interfering with a peace officer, assault in the third degree and disorderly conduct; judgment of guilty, from which the defendant appealed to this court. *Reversed; judgment directed.*

Richard D. Haviland, for the appellant (defendant).

C. Robert Satti, Sr., state's attorney, with whom was *Sarah E. Steere,* certified legal intern, for the appellee (state).

LANDAU, J., The principal issue in this appeal is whether the state of Connecticut has acquired criminal jurisdiction over the Mashantucket Pequot Indian reservation in Ledyard. The defendant, Lake Spears, was charged by a substitute information[1] with committing various crimes while on the Mashantucket Pequot reservation. The defendant moved to dismiss the charges, claiming that the court lacked subject matter jurisdiction because the charged offenses were allegedly committed on the Mashantucket Pequot reservation.[2] The

[1] The defendant was arrested initially on a charge of disorderly conduct involving Keri Spears, his wife, a resident of the reservation.

[2] Although the defendant's motion to dismiss advances two separate grounds for dismissal, the defendant acknowledged at oral argument before the trial court that the second claim in the motion, that the alleged conduct needed to have occurred in a public place, was abandoned.

trial court denied that motion, and rendered a judgment of conviction following the defendant's plea of nolo contendere to the charges of interfering with a peace officer in violation of General Statutes § 53a-167a, assault in the third degree in violation of General Statutes § 53a-61, and disorderly conduct in violation of General Statutes § 53a-182. The defendant's plea was entered conditional on his right to appeal the denial of his motion to dismiss.[3]

The following facts are not in dispute. The Mashantucket Pequot Indian tribe is a federally recognized tribe that owns and occupies a tribal reservation containing approximately 1800 acres in Ledyard. The defendant is a member of the Narragansett Indian tribe, and not a member of the Mashantucket Pequot tribe.[4] On November 29, 1991, in response to a telephone call, State Trooper Robert Maynard was dispatched to investigate a disturbance at 8 Elizabeth George Drive, a residential address on the Mashantucket Pequot reservation. Maynard was assisted by Ledyard town constables Sergeant David Guiher and Officers John Craig and William Blanchette. As a result of actions by the defendant, he was arrested by Maynard and Craig, charged, and ultimately presented before the Superior Court. At the time of the defendant's arrest and presentment, he was "an Indian in

[3] General Statutes § 54-94a provides in pertinent part: "When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's . . . motion to dismiss, the defendant after the imposition of sentence may file an appeal within the time prescribed by law. The issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied the . . . motion to dismiss. A plea of nolo contendere by a defendant under this section shall not constitute a waiver by the defendant of nonjurisdictional defects in the criminal prosecution." See also, Practice Book § 4003.

[4] All parties agree that the fact that the defendant is not a member of the Mashantucket Pequot tribe has no legal significance in this appeal.

Indian territory." After the trial court found the defendant guilty on the plea of nolo contendere, the defendant appealed.[5]

The defendant claims that the trial court improperly concluded that the Connecticut Indian Land Claims Settlement Act of 1983[6] (Settlement Act) effected a complete grant of criminal jurisdiction over the Mashantucket Pequot reservation to the state in that it (1) found that the plain meaning of § 6 of the Settlement Act, 25 U.S.C. § 1755,[7] fully subjects the reservation to state criminal jurisdiction, and (2) found that the Mashantucket Pequot tribe has consented to state criminal jurisdiction.

The state asserts that it possesses criminal jurisdiction over the Mashantucket Pequot reservation pursuant to an express grant by Congress in § 6 of the Settlement Act. The state does not claim that the tribe is divested of self-government, or that the tribe cannot

[5] On December 15, 1992, the court granted the Mashantucket Pequot tribe's motion to intervene as amicus curiae. The tribe supports the defendant's position that the state lacks subject matter jurisdiction. On February 17, 1993, the court granted the motion filed by the United States government to intervene as amicus curiae. The United States government supports the state's position that the state, and not the federal government, has jurisdiction to prosecute the defendant for state crimes committed on the Mashantucket Pequot reservation.

[6] Public Law 98-134, 97 Stat. 851 (1983), codified at 25 U.S.C. §§ 1751–1760. The act is also known as the Mashantucket Pequot Indian Claims Settlement Act. Id. Under the terms of the act, the state contributed twenty acres of public land in Ledyard to establish initially the Mashantucket Pequot reservation. 25 U.S.C. § 1751 (f). Congress identified an additional 800 acres of private land surrounding the initial twenty acres as "settlement lands" to be purchased for the tribe and incorporated into the reservation. 25 U.S.C. §§ 1752 and 1754. Reservation land is held in trust for the tribe by the federal government. 25 U.S.C. § 1757.

[7] Section 6 of the Settlement Act, codified at 25 U.S.C. § 1755, provides: "Notwithstanding the provision relating to a special election in section 406 of the Act of April 11, 1968 [codified at 25 U.S.C. § 1326], the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act [codified at 25 U.S.C. § 1321 et seq.]."

enact tribal laws that govern the conduct of tribal members, or that the tribe lacks power to enforce such laws.[8]

The parties in this matter are in the curious position of agreeing on the issue, the general principles of law, the relevant authorities and the primary facts. Where the parties differ is on the result that is rendered after the facts are applied to the law.

The defendant claims that the state lacks jurisdiction over criminal offenses committed by Indians while on the Mashantucket Pequot reservation. The state and the defendant agree that states do not have jurisdiction over Indian country unless Congress has specifically authorized such jurisdiction. *Worcester* v. *Georgia*, 31 U.S. 515, 8 L. Ed. 483 (1832). They disagree, however, in regard to the application of § 6 of the Settlement Act. Specifically, they disagree on the issue of

[8] In its amicus brief, the United States government claims that it has two interests to protect. The first is in maintaining a correct interpretation of the federal statutes at issue here. It claims that the defendant and the tribe's position is simply an incorrect interpretation of the law. The United States government also claims a strong administrative interest in the outcome of this case because it claims that the logical consequence of the defendant's position is that the state courts also lack jurisdiction over many criminal prosecutions for crimes committed on the reservation by nonIndians; the corollary being that the federal courts and the federal government must assume the burden of these prosecutions. The government asserts that "the issue before the [Appellate Court] has large consequences for the United States. Adoption of the defendant's position would impose a significant burden on the federal judiciary, the federal courts, the United States Attorney's office, the United States Marshals' Service and all other federal law enforcement agencies. Without in any way minimizing the enormous caseload in the state courts, the United States must point out that, based on a system that calculates the weight of each case, the United States District court for the District of Connecticut had one of the heaviest caseloads per judgeship in the federal judicial system. See, 1991 Federal Court Management Statistics, Administrative Office of the United States Courts, p. 45. Our District Court and its associated personnel cannot easily absorb new area of jurisdiction, especially in criminal cases subject to the Speedy Trial Act. See, 18 U.S.C. § 3161 et seq."

whether § 6 vests the state with jurisdiction over crimes committed by Indians on the Mashantucket Pequot tribe's reservation.

We agree with the defendant, and we arrive at our conclusion by way of the following statutory path. Section 6 of the Settlement Act, codified at 25 U.S.C. § 1755, addresses the issue of the state's jurisdiction over the Mashantucket Pequot tribe. This statute refers to portions of title IV of the Indian Civil Rights Act of 1968, codified at 25 U.S.C. §§ 1321–1326. The dispute in the present case concerns the impact of 25 U.S.C. § 1755 on §§ 401 and 406 of the Indian Civil Rights Act of 1968, codified at 25 U.S.C. §§ 1321 (a) and 1326, respectively. Specifically, the issue before us is whether 25 U.S.C. § 1755 vests the state with criminal jurisdiction over the Mashantucket Pequot tribe notwithstanding the provision contained in 25 U.S.C. § 1321 (a), which otherwise requires that a tribe manifest its consent to jurisdiction prior to a state's assumption of jurisdiction.

We begin our analysis by examining the well established principles that govern state jurisdiction over Indians in Indian country.[9] "Criminal jurisdiction over offenses committed in 'Indian country' . . . is governed by a complex patchwork of federal,[10] state,

[9] "Indian country" is defined in 18 U.S.C. § 1151, which provides in pertinent part: "Except as otherwise provided in sections 1154 and 1156 of this title, the term 'Indian country' . . . means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . . ." As a threshold matter, we note that the Mashantucket Pequot tribe is a federally recognized Indian tribe; 25 U.S.C. § 1758; and occupies a reservation of land in Ledyard pursuant to General Statutes § 47-63. The Mashantucket Pequot reservation is, therefore, Indian country to which federal law applies. See 25 U.S.C. § 1152.

[10] For example, the Indian Country Crimes Act, codified at 18 U.S.C. § 1152, extends "the general laws of the United States . . . to the Indian country," except to "offenses committed by one Indian against the person or property of another Indian . . . ." "These latter offenses typically are subject to the jurisdiction of the concerned Indian tribe, unless they are

and tribal law."[11] (Citation omitted; internal quotation marks omitted.) *Negonsott* v. *Samuels*, U.S. , 113 S. Ct. 1119, 1121, 122 L. Ed. 2d 457 (1993). "As a practical matter, this has meant that criminal offenses by or against Indians have been subject only to federal or tribal laws . . . except where Congress in the exercise of its plenary and exclusive power over Indian affairs has 'expressly provided that State laws shall apply.' " (Citation omitted.) *Washington* v. *Yakima Indian Nation*, 439 U.S. 463, 470–71, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979). "When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the state's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest." *White Mountain Apache Tribe* v. *Bracker*, 448 U.S. 136, 144, 100 S. Ct. 2578, 65 L. Ed. 2d 655 (1980).

In 1953, pursuant to its plenary authority over Indian affairs, Congress enacted Public Law 83-280,[12] the first

among those enumerated in the Indian Major Crimes Act [codified at 18 U.S.C. § 1153]." *Negonsott* v. *Samuels*, U.S. , 113 S. Ct. 1119, 1121, 122 L. Ed. 2d 457 (1993). "Federal jurisdiction over the offenses covered by the Indian Major Crimes Act is exclusive of state jurisdiction." Id.

The Indian Major Crimes Act, codified at 18 U.S.C. § 1153, provides:

"(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A . . . incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

"(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense."

[11] See, e.g., Mashantucket Pequot Tribal Ordinance (M.P.T.O.) No. 112091-01, M.P.T.O. No. 011092-02, M.P.T.O. No. 113093-03.

[12] Public Law 83-280, 67 Stat. 588-90 (1953), codified, as amended, at 18 U.S.C. § 1162 and 28 U.S.C. § 1360.

federal jurisdictional statute of general applicability to Indian reservation lands; *Bryan* v. *Itasca County*, 426 U.S. 373, 379, 96 S. Ct. 2102, 48 L. Ed. 2d 710 (1976), and "the primary expression of federal policy governing the assumption by States of civil and criminal jurisdiction over the Indian Nations." *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Engineering*, 476 U.S. 877, 884, 106 S. Ct. 2305, 90 L. Ed. 2d 881 (1986) (*Three Tribes II*). The primary purpose of the act was to address the "problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement." Id.; *Washington* v. *Yakima Indian Nation*, supra, 439 U.S. 471; H.R. Rep. No. 848, 83d Cong., 1st. Sess., 5–6 (1953). Other purposes of the act were "to [promote] the gradual assimilation of Indians into the dominant American culture and [ease] the fiscal and administrative burden borne by the Federal Government by virtue of its control over Indian affairs." *Three Tribes II*, supra, 886; *Bryan* v. *Itasca County*, supra, 426 U.S. 387–88; H.R. Rep. No. 848, supra, 3, 6.

Section 2 of the act[13] embodied the provision for state criminal jurisdiction over offenses committed by or against Indians on reservations. *Bryan* v. *Itasca County*, supra, 380. It effected an immediate grant of criminal jurisdiction over Indian country to five states.[14]

[13] Section 2 of Public Law 83-280 provides in pertinent part: "Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State . . . ." See *Washington* v. *Yakima Indian Nation*, supra, 439 U.S. 471–72 n.9; see also 18 U.S.C. § 1162 and 28 U.S.C. § 1360.

[14] The act granted criminal jurisdiction to California, Minnesota, Nebraska, Oregon and Wisconsin, with an express exception for the reservations of three tribes. See *Washington* v. *Yakima Indian Nation*, supra, 439 U.S. 471–72 n.9. Alaska was added to this group in 1958. See 18 U.S.C. § 1162 and 28 U.S.C. § 1360.

To the remaining states, it provided an option to assume jurisdiction over criminal offenses in Indian country "without consulting with or securing the consent of the tribes that would be affected." *Washington* v. *Yakima Indian Nation*, supra, 439 U.S. 473–74. Section 7 of the act established a procedure by which all other states could obtain civil or criminal jurisdiction over Indian tribes: "The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof." See *Washington* v. *Yakima Indian Nation*, supra, 474 n.9; *Schaghticoke Indians of Kent, Connecticut, Inc.* v. *Potter*, 217 Conn. 612, 622, 587 A.2d 139 (1991).

In 1968, Congress enacted title IV of the Indian Civil Rights Act,[15] which repealed § 7 of Public Law 83-280. Title IV requires that all subsequent assertions of jurisdiction be preceded by tribal consent. *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Wold Engineering*, 467 U.S. 138, 144, 104 S. Ct. 2267, 81 L. Ed. 2d 113 (1984) (*Three Tribes I*). "The impetus for the addition of a consent requirement in the 1968 amendments was congressional dissatisfaction with the involuntary extension of state jurisdiction over Indians who did not feel they were ready to accept such jurisdiction, or who felt threatened by it." *Three Tribes II*, supra, 476 U.S. 892, citing S. Rep. No. 721, 90th Cong., 1st Sess., 32 (1967). Section 401 of title IV,[16] which addresses the subject of criminal jurisdiction over Indian country, provides: "The consent of the United

[15] Public Law 90-284, 82 Stat. 79 (1968), codified at 25 U.S.C. §§ 1321–1326.

[16] 25 U.S.C. § 1321 (a).

States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, *with the consent of the Indian tribe* occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, *and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.*" (Emphasis added.) 25 U.S.C. § 1321 (a). "The method of a state's assumption of criminal jurisdiction is not specified by § 401 [25 U.S.C. § 1321 (a)], but is found in § 406 codified in 25 U.S.C. § 1326[17] . . . ." *Mashantucket Pequot Tribe* v. *McGuigan*, 626 F. Sup. 245, 247 (D. Conn. 1986).

In 1983, Congress enacted the Settlement Act for the purpose of settling tribal claims to much of the private and public lands located in Ledyard. *Mashantucket Pequot Tribe* v. *McGuigan*, supra, 626 F. Sup. 246–47.[18]

[17] Section 406 of the act, codified as amended at 25 U.S.C. § 1326, provides: "*Special election.* State jurisdiction acquired pursuant to this [subchapter] with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults."

[18] In *Mashantucket Pequot Tribe* v. *McGuigan*, supra, 626 F. Sup. 245, the plaintiff, an Indian tribe, sought a declaratory judgment and injunctive relief to preclude enforcement of state statutes pertaining to the conduct of bingo games on the plaintiff's reservation. The court held that the state's bingo statutes were regulatory and civil in nature and, therefore,

Section 6 of the act, codified at 25 U.S.C. § 1755, which addresses the subject of state jurisdiction over the Mashantucket Pequot tribe's reservation, provides: "*Notwithstanding the provision relating to a special election in section 406 [of the Indian Civil Rights Act],* the reservation of the Tribe is declared to be Indian country *subject to State jurisdiction to the maximum extent provided in title IV of such Act.*" (Emphasis added.)

In the present case, the defendant claims that even if the Settlement Act eliminates the requirement for a special election pursuant to 25 U.S.C. § 1326, it does not eliminate the general consent requirement contained in 25 U.S.C. § 1321 (a). The defendant also claims that since the tribe has never consented to the state's assumption of jurisdiction over offenses committed by Indians on the Mashantucket Pequot reser-

unenforceable under a grant of jurisdiction over criminal law. Id., 249. The court did not resolve the issue of whether Connecticut possessed criminal jurisdiction over the reservation; the court expressly reserved the issue of whether the Connecticut Indian Claims Settlement Act, 25 U.S.C. § 1751 et seq., eliminates the consent election requirement provided for in 25 U.S.C. § 1326. Id., 246.

We also take notice of the dicta in *Schaghticoke Indians of Kent, Connecticut, Inc.* v. *Potter,* supra, 217 Conn. 615 n.3: "[A] federal district court sitting in Connecticut has held recently that Connecticut has acquired criminal, but no civil, jurisdiction over state Indian tribes [citing *Mashantucket Pequot Tribe* v. *McGuigan,* 626 F. Sup. 245, 249 (D.Conn. 1986)]." Respectfully and regretfully, we do not read the holding in *McGuigan* as does our Supreme Court.

The District Court (Dorsey, J.), after opining that "[t]here is a difference between a criminal law which prohibits conduct and imposes penal sanctions if the prohibition is disobeyed, and a law which regulates, controls and/or limits conduct"; Id., 248; stated, "The dominant character of the nature and purpose of Connecticut's bingo laws is regulatory and the single penal statute included therein is not to be considered in isolation. . . . As a regulatory action, Connecticut's bingo laws . . . are found not to be enforceable under a grant of jurisdiction over criminal law." (Citation omitted.) Id., 249. The *McGuigan* court did not reach the issue of criminal jurisdiction because, even assuming that the court did do so, the statutes in question were found to be regulatory rather than criminal.

vation, the state lacks such jurisdiction and, therefore, the defendant's motion to dismiss must be granted.

A

We first address the issue of whether the Settlement Act dispenses with the special election requirement contained in 25 U.S.C. § 1326. The trial court concluded that the plain meaning of 25 U.S.C. § 1755 "clearly indicates the intent of Congress to dispense with the special election requirement of § 406 [of title IV of the Indian Civil Rights Act, codified at 25 U.S.C. § 1326]."

"It is the duty of the court to 'interpret statutes as they are written'; *Muha* v. *United Oil Co.*, 180 Conn. 720, 730, 433 A.2d 1009 (1980); and not 'by construction read into statutes provisions which are not clearly stated.' *Glastonbury Co.* v. *Gillies*, 209 Conn. 175, 179, 550 A.2d 8 (1988)." *State* v. *Johnson*, 227 Conn. 534, 542, 630 A.2d 1059 (1993). Where the " 'will of Congress . . . has been expressed in reasonably plain terms, that language must ordinarily be regarded as conclusive.' " *Negonsott* v. *Samuels*, supra, 113 S. Ct. 465, citing *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 570, 102 S. Ct. 3245, 73 L. Ed. 2d 973 (1982).

25 U.S.C. § 1755 provides: "Notwithstanding the provision relating to a special election in section 406 of the [Indian Civil Rights Act] . . . ." The plain language of this statute clearly indicates that Congress intended to dispense with the special election requirement that is otherwise required in order for a state to assume criminal jurisdiction over crimes committed by Indians in Indian country. We conclude, therefore, that the trial court properly determined that 25 U.S.C. § 1755 dispenses with the special election requirement contained in 25 U.S.C. § 1326.

B

We next address the issue of whether the Settlement Act dispenses with the general consent requirement

contained in 25 U.S.C. § 1321 (a). The trial court stated that " '[t]he primary concern of Congress in enacting Public Law 280 that emerges from its sparse legislative history, was with the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institution for law enforcement.' . . . Since the Settlement Act dispenses with this special election and grants criminal jurisdiction in the State of Connecticut without the requirements of any such vote, it must be concluded that criminal jurisdiction has been fully vested in the State of Connecticut." Initially, we note that the language contained in 25 U.S.C. § 1755 is ambiguous because, although it "eliminates the consent election provided in 25 U.S.C. § 1326, it may have created an anomaly by the fact that it does not eliminate the consent requirement of 25 U.S.C. § 1321 [a]." *Mashantucket Pequot Tribe* v. *McGuigan*, supra, 626 F. Sup. 248. Since the statutory language is unclear, we must determine whether Congress intended to eliminate the general consent requirement contained in § 401 of title IV, codified at 25 U.S.C. § 1321 (a).

"It is fundamental that statutory construction requires us to ascertain the intent of the legislature and to construe the statute in a manner that effectuates that intent." *State* v. *Johnson*, supra, 227 Conn. 541. "If the statutory language is unclear, the intent of the legislature may be ascertained by looking to the legislative history and to the purpose that the statute was intended to serve." Id., 542. "Furthermore, it is a well established rule of statutory construction that repeal of the provisions of a statute by implication is not favored and will not be presumed where the old and the new statutes, in this case [25 U.S.C. § 1321 (a) and 25 U.S.C. § 1755], can peacefully coexist." *McCarthy* v. *Commissioner of Correction*, 217 Conn. 568, 578, 587 A.2d 116 (1991). " 'In the interpretation of a statute,

a radical departure from an established policy cannot be implied. It must be expressed in unequivocal language.' " Id. 'The legislature is presumed to be aware and to have knowledge of all existing statutes and the effect which its own action or nonaction may have on them." *Windham First Taxing District* v. *Windham*, 208 Conn. 543, 554, 546 A.2d 226 (1988).

As we noted previously, Congress enacted title IV of the Indian Civil Rights Act in response to "congressional dissatisfaction with the involuntary extension of state jurisdiction over Indians who did not feel they were ready to accept such jurisdiction, or who felt threatened by it." *Three Tribes II*, supra, 476 U.S. 892, citing S. Rep. No. 721, 90th Cong., 1st Sess., 32 (1967). Congress concluded that tribes were critical of Public Law 83-280 "because it authoriz[ed] the unilateral application of State law to all tribes without their consent and regardless of their needs or special circumstances." See Additional Views of Sen. S. Ervin, 90th Cong., 2d Sess., 1865 (1968). The Indian Civil Rights Act amended Public Law 83-280 so that "[a]ny State not presently having civil and criminal jurisdiction over Indian tribes would be required to obtain the consent of the tribes before assuming such jurisdiction." Id. In order to verify that tribal members were in fact "ready to accept such jurisdiction," Congress enacted § 406 of title IV, 25 U.S.C. § 1326. Section 406 provides that tribal consent may be manifested only by a majority vote of the tribe's enrolled adult Indians, voting in a special election held for that purpose. *Kennerly* v. *District Court of Montana*, 400 U.S. 423, 429, 91 S. Ct. 480, 27 L. Ed. 2d 507 (1971).[19]

[19] In *Kennerly* v. *District Court of Montana*, supra, 400 U.S. 425, the United States Supreme Court analyzed the procedures by which "tribal consent" must be manifested under title IV of the Indian Civil Rights Act; the court held that unilateral legislative action by a tribal counsel "does not comport with the explicit requirements of the Act." In that case, a non-Indian brought an action in a Montana state court against two Indians to

Essentially, Congress enacted only one tribal consent requirement, embodied in § 401 of the act, codified at 25 U.S.C. 1321 (a), and one method by which consent must be demonstrated, embodied in § 406 of the act, codified at 25 U.S.C. § 1326. "The method of a state's assumption of criminal jurisdiction is not specified by § 401 [25 U.S.C. § 1321 (a)], but is found in § 406 [25 U.S.C. § 1326] . . . wherein the election to effectuate consent is set forth and is mandatory." *Mashantucket Pequot Tribe* v. *McGuigan*, supra, 626 F. Sup. 247. After tribal consent is manifested by the method prescribed in § 406, "the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State."[20] Id.; see 25 U.S.C. § 1321 (a).

In light of the legislative history of the Indian Civil Rights Act and the case law interpreting § 401 of the Indian Civil Rights Act, we conclude that Congress, by enacting 25 U.S.C. § 1755, did not intend to dispense with the general consent requirement embodied in 25 U.S.C. 1321 (a). "If the legislature had intended by

collect a debt. The Montana Supreme Court ruled that the state court possessed jurisdiction based on a 1967 unilateral act of the tribal counsel. The act of the tribal counsel provides in part: "The Tribal Court and the State shall have concurrent and not exclusive jurisdiction of all suits wherein the defendant is a member of the Tribe which is brought before the Courts." The United States Supreme Court reversed, concluding that the tribe's unilateral act did not comport with the explicit requirements of title IV of the Indian Civil Rights Act because the "plain meaning" of the statute requires that tribal consent "must be manifested by [a] majority vote of the enrolled Indians within the affected area of Indian country." Id., 427–29.

[20] In *Mashantucket Pequot Tribe* v. *McGuigan*, supra, 626 F. Sup. 247, the court noted the significance of this quoted phrase: "As thus incorporated in § 401 [25 U.S.C. § 1321 (a)], not in a separate sentence, and as unlikely to have a separate effect, independent of the prior provisions of § 401 (a), [this] phrase is construed to describe the force and effect of state law upon fulfillment of the conditions [contained in § 401(a)]." Id. "This would perhaps be clearer if the word 'then' were inserted such that the quoted phrase read: '. . . and the criminal laws of such state shall *then* have . . . . ' " (Emphasis added.) Id.

enacting [25 U.S.C. § 1755] to do away with the long-standing policy of [the general consent requirement], it could easily have said so." See *McCarthy* v. *Commissioner of Correction*, supra, 217 Conn. 578. In fact, Congress did not do so; it merely removed the specific procedure by which tribal consent must be manifested.

C

Finally, we address the issue of whether the Mashantucket Pequot tribe has consented to the state's assumption of criminal jurisdiction over offenses committed by Indians on the Mashantucket Pequot reservation. Both the state and the defendant cite portions of the Mashantucket Pequot Tribal Ordinance (M.P.T.O.) No. 112091-01[21] to support their argument. A we stated earlier, it is our duty to "interpret statutes as they are written." *Muha* v. *United Oil Co.*, supra, 180 Conn. 730.

[21] M.P.T.O. No. 112091-01 provides in pertinent part: "*Section 1(a). Violations of State criminal laws:* Every offense against those criminal laws of the State of Connecticut which are made applicable to the Mashantucket Pequot Reservation by Section 6 of the Mashantucket Pequot Indian Claims Settlement Act [25 U.S.C. §§ 1755] and 25 U.S.C. § 1321, shall be an offense against the law of the Mashantucket Pequot Tribe and the Mashantucket Pequot Tribe hereby adopts and incorporates by reference, as the law of the Mashantucket Pequot Tribe, all provisions of such criminal laws of the State of Connecticut which are made applicable to the Mashantucket Pequot Reservation by Section 6 of the Mashantucket Pequot Indian Claims Settlement Act."

"*Section 5: Concurrent jurisdiction over State offenses.* The Mashantucket Pequot Tribal Police Department shall exercise concurrent authority with law enforcement officers of the State of Connecticut to make arrests for violations of criminal laws of the State which are made applicable to the Mashantucket Pequot Reservation by Section 6 of the Mashantucket Pequot Indian Land Claim Settlement Act [25 U.S.C. § 1755] and 25 U.S.C. § 1321; provided: however, that persons arrested by officers of the Mashantucket Pequot Tribal Police Department for such violations of criminal laws of the State of Connecticut shall be transferred as promptly as may be feasible to the jurisdiction of State law enforcement officers and the Mashantucket Pequot Tribal Police Department shall comply with all reasonable requirements of State law enforcement officers and agencies in order to assist in the prosecution of such offenders under the laws of the State of Connecticut."

"In the interpretation of a statute, a radical departure from an established policy cannot be implied. It must be expressed in unequivocal language." (Internal quotation marks omitted.) *Iacomacci* v. *Trumbull*, 209 Conn. 219, 222, 550 A.2d 640 (1988).

The plain language of M.P.T.O No. 112091-01 does not amount to an "unequivocal expression" of tribal consent. On its face, the ordinance merely appears to acknowledge and address the well established principle that tribal courts lack inherent authority to punish nonIndians on the reservation, and may not exercise such jurisdiction without the consent of Congress. See, *Oliphant* v. *Suquamish Indian Tribe*, 435 U.S. 191, 210, 98 S. Ct. 1011, 55 L. Ed. 2d 209 (1978). Absent an unequivocal expression of consent by the tribe, we are unwilling to imply such consent. Our conclusion that the tribe has not consented to such jurisdiction is also supported by the language contained in subsequent tribal ordinances.[22]

We conclude, therefore, that the plain language of the Mashantucket Pequot Tribal Ordinances does not unequivocally express the tribe's consent to the assumption by the state of jurisdiction over offenses committed on the reservation by Indians. Indeed, the plain language of the ordinances expressly denies such consent.

In sum, we conclude that although § 6 of the Settlement Act, codified at 25 U.S.C. § 1755, dispenses with

[22] "[T]he tribe . . . has criminal jurisdiction over Indians who commit crimes on the reservation . . . ." M.P.T.O. No. 011092-02. "[T]he Mashantucket Pequot tribe has inherent authority to exercise jurisdiction over criminal matters that arise on the Mashantucket Pequot Tribal Nation Lands . . . the tribe has determined that it will exercise its jurisdiction to the maximum extent permitted by federal law . . . *the tribe has never intended that the State of Connecticut shall exercise criminal jurisdiction within the Nation Lands nor has the tribe by any act consented to the exercise by the state of criminal jurisdiction within the Nation Lands* . . . ." (Emphasis added.) M.P.T.O. No. 113093-03.

the special election requirement of 25 U.S.C. § 1326, it does not dispense with the general consent requirement of 25 U.S.C. § 1321 (a). Since 25 U.S.C. § 1321 (a) requires that tribal consent be manifested prior to "the criminal laws of the state having the same force and effect within Indian country as they have elsewhere within the state," and the Mashantucket Pequot Tribe has never consented to the state's assumption of criminal jurisdiction, we hold that 25 U.S.C. § 1755 does not vest the state with criminal jurisdiction over criminal offenses committed by Indians on the Mashantucket Pequot reservation.

The judgment is reversed and the case is remanded with direction to grant the defendant's motion to dismiss.

In this opinion the other judges concurred.

CR10-202120

STATE OF CONNECTICUT SUPERIOR COURT,
G.A.-10

VS. JUDICIAL DISTRICT
OF N.L. AT N.L.

LAKE SPEARS AUGUST 13, 1993

MEMORANDUM OF DECISION
ON MOTION TO DISMISS

This is a criminal prosecution in which defendant stands charged with violating the criminal law of the State of Connecticut. Defendant has been charged with two counts of assault on an officer in violation of General Statutes Section 53a-167c, one count of inciting injury to persons in violation of General Statutes Section 53a-179a, interfering with an officer in violation of General Statutes Section 53a-167a, and disorderly conduct in violation of General Statutes Section 53a-182.

The charges are pending before the Superior Court, Geographical Area 10, within the New London Judicial District.

It is alleged, and not disputed by the

State, that, defendant is an Indian and the events which resulted in the arrest and prosecution on the above noted charges occurred in "Indian country" on the Mashantucket Pequot reservation within the State of Connecticut. Defendant has moved to dismiss the action claiming that the state does not have subject matter jurisdiction because Congress has not granted the State criminal jurisdiction over Indians on the reservation.

For reasons hereinafter stated it is found that the State does have criminal jurisdiction to prosecute this action and the motion to dismiss is denied.

Although the motion to dismiss, dated October 29, 1992 advances two separate grounds for dismissal, at oral argument, it was acknowledged by defendant that the second claim has been abandoned and all parties have addressed only the question of subject matter jurisdiction. The court,

therefore, has addressed only this issue of subject matter jurisdiction.

For the purposes of this motion only, with the understanding that it does not constitute an admission by defendant against his penal interest, the parties have agreed that the following factual situation underlies the State's case.

In connection with this statement of facts, it is noted that defendant is an Indian, but a member of the Narragansett tribe and not a member of the Mashantucket Pequot Tribe. All parties agree that the defendant's not being a member of the tribe has no legal significance. It is agreed that at the time of the alleged offense defendant Spears was an Indian in Indian country.

At approximately 11:00 p.m. on November 29, 1991, an anonymous 911 call was received by the State Police alleging a major disturbance and violent activity

occurring at 8 Elizabeth George Drive, Ledyard, Connecticut. Such residence is located on the Mashantucket Pequot Reservation. As a result of the call, Trooper Robert D. Maynard of the State Police was dispatched to that location to investigate the matter. Being unfamiliar with the exact location of the residence, he was provided assistance by Ledyard Town Constables Sgt. Guiher and Officers Craig and Blanchette. Upon arrival at the residence, the officers were admitted by one Keri Spears who it was later determined was a resident of the premises and the wife of the defendant. Mrs. Spears, who appeared quite upset, advised the officers that a short time earlier the defendant, who was somewhat intoxicated, had become violent, had thrown things around the house, and had thrown a chair into a wall. Upon being shown around the residence by Mrs. Spears, Trooper Maynard noticed the

indentation in the wall allegedly caused by the chair, the telephone that had been ripped from its connection, and other items in disarray. The defendant was not present at the residence at this time, but some children and at least two other adults were present. Shortly after the officers had completed reviewing the premises, the defendant returned home. He appeared to the officers to be somewhat intoxicated and clearly is an agitated condition. Almost immediately after his arrival he used profanity addressed to the officers, demanding that they leave his residence and stating that they had no right to be there. The officers tried to quiet him as he sat in the living room in the presencs of the other adults, but were unable to do so. Trooper Maynard, being concerned for the well-being of the persons in the household, arrested the defendant on the charge of disorderly conduct. The defendant refused

to leave his residence. Sgt. Guiher, who knew the defendant, talked him into going from the living room to the dining room where they sat at a table. After talking for a short while, the defendant continued in his refusal to accompany the officers, stood up and made a threatening gesture to Guiher. Guiher then used a Cap-Stun to temporarily disable the accused so he could be taken into custody. As the defendant was being taken into custody by Trooper Maynard and Constable Craig, he fought wih them, striking both Maynard and Craig, injuring each of them. He was finally cuffed and removed from the residence.

During the above period of time, other adults had entered the residence and the defendant called to them for help in preventing the officers from taking him from the premises. He stated (in words more offensive than expressed here) that since the officers were not U.S. Marshalls

they had no right to be in his premises; he encouraged others present to go and round up the Tribe; he encouraged others to help him get away from the officers he stated, "This is Custer's last stand and the Indians will win."

In response to his remarks, other persons present in the living room attempted to get into the dining room/kitchen area, were becoming more hostile, and it was necessary for Sgt. Guiher and Officer Blanchette, who had already called for "back-up", to physically block the entrance and restrain a number of people.

After defendant's arrest and presentment on the above charges, his attorney filed the present motion to dismiss.

On December 14, 1992, the Mashantucket Tribe, claiming jurisdictional issues involved in this case would have a profound

and long lasting effect on the Tribe's relationship with the State of Connecticut, moved to intervene as amicus curiae. This motion was granted on December 15, 1992.

The Tribe, as amicus curiae, has filed briefs and argued in support of defendant's position that the state has no subject matter jurisdiction to prosecute this case. Since the position of the Tribe and defendant are identical, for purposes of simplicity, defendant and the Tribe will be referred to collectively as "defendant."

On February 10, 1993, the United States, claiming that it had an interest in the proceedings, moved to appear as amicus curiae. That motion was granted on February 17, 1993 and the United States has filed a brief and argued in support of the State of Connecticut's position that the State and not the Federal Government has jurisdiction to prosecute defendant for state crimes committed on the Mashantucket

Pequot Reservation.

Defendant claims that the federal government has exclusive criminal jurisdiction over the Indians on the reservation of the federally recognized tribe and that the State of Connecticut has no such jurisdiction. In this claim defendant relies on the well-established principle that states cannot exercise jurisdiction on Indian reservations unless Congress has specifically authorized such jurisdiction. The states have never had inherent authority over Indians in Indian country. Worcester v. State of Georgia, 31 U.S. 515, 8 L.Ed. 483 (1832). When the states adopted the United States Constitution they specifically acknowledged the exclusive plenary power of the Federal Government over Indians in Indian country. U.S. Constitution Art. I, Sec. 8, cl. 3; Schaghticoke Indians of Kent, Connecticut, Inc., v. Potter, 22 Conn. App. 229, 231,

577 A.2d 719 (1990).

It necessarily follows then that if Connecticut has criminal jurisdiction on the Mashantucket Pequot Reservation, as claimed, such jurisdiction must have been granted by Congress. The federal statute which vests the state with such jurisdiction is the Connecticut Indian Land Claim Settlement Act. 25 U.S.C. Sections 1751-1760.

By way of background, the Mashantucket Pequot Tribe is the successor to the claims of the Western Pequot Tribe of Indians. Prior to 1983, the Tribe asserted its claimed rights to public and private land in the Town of Ledyard. It was claimed that such lands, originally the property of the tribe, were wrongfully misappropriated in violation of the Federal Constitution and the laws of the United States. The Tribe's claims were the subject of a lawsuit in the Federal District Court for

the District of Connecticut entitled Western Pequot Tribe of Indians v. Holdridge Enterprises, Inc. Civil H-76-193. It was to resolve these claims and to eliminate the cloud on titles to lands resulting from the Indian claims that the Settlement Act was enacted in 1983. Mashantucket Pequot Tribe v. McGuigin, 626 F.Supp. 245, 246 (D. Conn. 1986).

Whether or not criminal jurisdiction over Indians on the Mashantucket Reservation was given to the State of Connecticut by the Settlement Act depends on the intent of Congress as expressed in the act.

Defendant argues that land set aside as an Indian reservation is territory over which Indian tribes are generally self-governing and from which state jurisdiction is usually excluded. Because of this Indian immunity doctrine, jurisdiction over crimes by Indians on reservations has been

overwhelmingly left to the tribe. Defendant cites authority for the proposition that Congress can authorize state jurisdiction over crimes by Indians in Indian country but it is done so rarely and it must be done expressly. A state's right to prosecute Indians will not be lightly inferred or assumed by the courts. Washington v. Confederated Bans and Tribes of the Yakima Indian Nation, 439 U.S. 463, 470-71, 99 S.Ct. 740, 58 L.ed. 2d 736 (1973).

Defendant argues that because of these principals the statutes in question must be liberally interpreted for the benefit of the tribe. In the recent case of Negonsott v. Samuels, ___ U.S. ___, 113 S.Ct. 1119, 122 L.Ed. 2d 457 (1993), however, the United States Supreme Court found that the conferral of criminal jurisdiction on the State of Kansas could be a benefit to the tribes in question. In so deciding, the

court drew a distinction between a law for the benefit of dependent Indian Tribes and a law for the benefit to accused Indian criminals.

Notwithstanding of the general law applicable to state jurisdiction over Indians in Indian country in interpreting statutes, the function of the court is to give effect to the will of Congress and "where its will has been expressed in reasonably plain terms, 'that language must be ordinarily be regarded as conclusive.'" (citation omitted.) Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 570, 102 S.Ct. 3245, 73 L.Ed. 2d 973 (1982).

The section of the Settlement Act which bears directly on the issue is Section 1755 entitled "State jurisdiction over reservations." The language of the section is as follows:

> Notwithstanding the provision relating to a special election in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326) [25 U.S.C.A. Section 1326],

the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act [25 U.S.C.A. Section 1321 et seq.].

The plain meaning of this section of the Act is that, notwithstanding the provision relating to a special election in another statute (25 U.S.C.A. Section 1326), the reservation created by the Settlement Act is declared to be[1] Indian country subject to State jurisdiction to the maximum extent provided by 25 U.S.C.A.

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[1]Indian country is defined by 18 U.S.C.A. Section 1151 as "...(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities wihin the borders of the United States whether within the original or subsequently acquired territory tyhereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." See also Seymour v. Superintendent of Washington State Penitentiary, 368 U.S. 351, 82 S.Ct. 424, 7 L. Ed. 346 (1962).

Section 1321.

This latter statute entitled "Assumption by State of criminal jurisdiction" provides as follows:

> The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian Tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure or jurisdiction over any or all of such offenses committed within such Indian country or any party thereof as may be determined by such State to the same extent that such state has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

As noted, Section 1755 of the Settlement Act clearly indicates the intent of Congress that the State should have jurisdiction to the maximum extent provided by 25 U.S.C.A. Section 1321. This statute grants complete criminal jurisdiction to the states so that the criminal laws of the State have "the same force and effect

within such Indian country or part thereof, as they have elsewhere in the State."

The Settlement Act thus appears to have effected a complete grant of criminal jurisdiction over the reservation to the State.

Section 1755 vests jurisdiction in the state "notwithstanding the provisions relating to the special elections in section 406 of the Act of April 11, 1968...."

Section 406 of the Act of April 11, 1968, now 25 U.S.C. Section 1326, provides as follows:

> State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requesting to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

The phrase "Notwithstanding the provisions relating to a special election in section 406" clearly indicates the intent of Congress to dispense with the special election requirement of Section 406 and vest jurisdiction over criminal offenses on the reservation in the state without the requirement of a tribal vote. Defendant does not dispute this interpretation, but claims that federal law requires an additional vote not covered by the Settlement Act.

Defendant's position is that the Settlement Act generally follows the provisions of Public Law 280 (codified as 25 U.S.C. Section 1321-26) which authorizes the transfer to states of certain on-reservation jurisdiction over Indians. It is claimed by defendant that under Public Law 280 assumption of jurisdiction is predicated upon two separate and independent provisions for consent by

affected Indian tribe.

The first tribal consent provision defendant argues is a general consent of the tribe found in 25 U.S.C. Section 1321. The second consent provision in the tribal vote requirement set forth in 25 U.S.C. Section 1326.

It is defendant's claim that under the Settlement Act Congress eliminated any requirement for the tribal vote under 25 U.S.C. Section 1326, but did not eliminate the general consent required under 25 U.S.C. 1321. Since the tribe has never given this general consent, defendant claims that the State has not acquired criminal jurisdiction over indians on the reservation, and the motion to dismiss must be granted.

Defendant's argument that Public Law 280 requires two tribal votes is not

persuasive.[2]

Public law 280 was enacted to allow state jurisdiction over Indians on reservations where the provision of the Act had been complied with. "The primary concern of Congress in enacting Public Law 280 that emerges from its sparse legislative history, was with the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institution for law enforcement." Bryan v. Itasca Cty. Minnesota, 426 U.S. 373, 379, 95 S. Ct. 2102, 2106, 98 L.Ed. 710 (1976).

Section 1321 of the Act, gives to any state not having it, the consent of the United State, to assume jurisdiction over criminal offenses committed by or against

---

[2] Dicta in Mashantucket Pequot Tribe v.McGuigin, supra, 248 indicates an opinion that Section 1321 required a separate expression of consent. The court, however, found that it was not necessary to address the question as to whether two votes were required.

Indians in the areas of Indian country situated within such state "with the consent of the Indian tribe occupying the particular Indian country as part thereof." There is no further elaboration on what is meant by consent or how it is to be obtained.

Section 1326 of the Act, previously quoted, sets forth in detail how consent of the tribe may be obtained. It is reasonable to conclude that the acceptance procedure detained in Section 1326 was intended by Congress to be the vehicle whereby the consent of the tribe mentioned in Section 1321 would be determined. No plausable reason has been advanced as to why a tribe would have to undergo duplicate votes on the same subject.

In Kennerly v. District Court of Ninth J.D. of Montana, 400 U.S. 423, 429, 91 S. Ct. 480, 483, 27 L.Ed. 2d 507 (1971) the United States Supreme Court reached the

same conclusion that Section 1326 set forth the procedures by which tribal consent must be manifested.

It is clear then that only one vote is required of a tribe to consent to the state criminal jurisdiction under Public Law 280 and the procedure for the special election to effect such vote has been set forth in Section 406(25 U.S.C. Section 1326). Since the Settlement Act dispenses with this special election and grants criminal jurisdiction in the State of Connecticut without the requirements of any such vote it must be concluded that criminal jurisdiction has been fully vested in the State of Connecticut.

Even if defendant was correct in his argument that the Act of April 11, 1968 required two separate expressions of consent on the part of the tribe, such argument would not be persuasive.

Jurisdiction was granted to the State

here, not by the Act of April 11, 1968, but by the Settlement Act. Although the Settlement Act, incorporated by reference, the provisions of the general Act granting state jurisdiction over Indians in Indian country and dispensed with the special election provision required by Section 406 (25 U.S.C.A. Section 1326), it did not adopt all of the provisions of the general act.

Assuming, for purposes of argument, that the Act of April 11, 1968 required a separate expression of tribal consent as claimed, there is nothing to indicate that Congress intended to incorporate such consent into the Settlement Act.

Other factors tend to confirm that by the Settlement Ace Congress intended to grant criminal jurisdiction over Indians on the reservation to the State.

I

The conclusion that the Settlement Act

grants criminal jurisdiction over Indians on the reservation to the State of Connecticut is consistent with other decided cases.

In Mashantucket Pequot Tribe v. McGuigan, supra, the court was asked to decide whether or not state laws regulating bingo games could be enforced on the reservation. The State claimed that it could regulate bingo on the reservation under its general authority to enforce criminal laws on the reservation. The Court (Dorsey District Judge) decided that the state laws covering bingo were not criminal but were regulatory in nature and, therefore, such laws were found not to be enforceable "under a grant of jurisdiction over criminal law" supra 249. In so deciding, while the court did not find directly that Connecticut had criminal jurisdiction on the reservation, it did imply such jurisdiction. There would have

been no need to differentiate between criminal law and laws which regulate conduct if the State had no criminal jurisdiction.

In this connection see Schaghticoke Indians of Kent, Connecticut, Inc. v. Potter, 22 Conn. App. 229, 237, 577 A.2d 719 (1990), Aff'd. 217 Conn. 612, 615 n.3, 587 A.2d 139 (1990).

The same issue presented here came before the court on a motion to dismiss for want of jurisdiction in State v. Donald E. Dagett, Superior Court, G.A. 10, judicial district of New London, Docket No. CR10-16-936 (O'Connell, J.). In that case, Dagett, an Indian, was arrested for violation of the criminal law of the State of Connecticut on the Mashantucket Reservation on 1987.

Dagett moved to dismiss raising the jurisdiction now before this court. The matter was briefed, and after argument the

court denied the motion concluding that the State had criminal jurisdiction to prosecute Indians on the reservation for violations of Connecticut criminal law. No appeal was taken from Dagett's subsequent conviction.

II

The United State's Attorney for the District of Connecticut opposes the motion to dismiss and has concluded that the State of Connecticut has jurisdiction over crimes committed on the reservation. His opinion is expressed in the memorandum dated February 12, 1992, from Albert S. Dabrowski, United State's Attorney District of Connecticut to the Special Agent In Charge of Federal Bureau of Investigation, New Haven, Connecticut. In the cover letter to that letter Mr. Dabrowski stated:

"It is the opinion of the Office that criminal jurisdiction of the State of Connecticut and the United States Government is the same on the Mashantucket Pequot Indian Reservation as is elsewhere in Connecticut. That it is to say, the

State of Connecticut has the same power and authority to enforce state criminal laws on the Reservation as it does, for example, in downtown New Haven or elsewhere in the State. Similarly, federal jurisdiction on the Reservation is the same as it is in other parts of the State.

This opinion of the United States Attorney on the issue of federal-state criminal jurisdiction the reservation is significant since, if defendant was correct, in his position that only federal criminal law is applicable to Indians on the reservation, the United States Attorney would be responsible for enforcing federal law on the reservation. In this regard it is well established that "courts should accord great deference to the construction given a statute by the agency charged with its enforcement." Board of Education v. Connecticut State Board of Labor Relations, 190 Conn. 235, 241, 460 A.2d 1255 (1983).

III

Prior actions of the tribe are also consistent with state criminal jurisdiction

over the reservation and indicate an understanding by the tribe that the Settlement Act placed such jurisdiction with the state.

Section 1758(b) of the Settlement Act required the tribe to file with the Secretary of the Interior a copy of its organic governing document which must be consistent with the terms of the Act.

On November 20, 1991, the tribal council enacted Ordinance Number 112091-01 as the Mashantucket Pequot Tribal Law and Order Code. There is nothing to indicate that this ordinance was filed with the secretary in compliance with the Act, but, it is logical to assume that it was done or that any document so filed would be consistent with the ordinance. It is also logical to conclude that enacting the ordinance, the tribal council intended that the Law and Order Code be in accordance with the Settlement Act.

The ordinance clearly incates an understanding by the tribe that state criminal law extended over the reservation without exception. Section 5 of the ordinance, entitled "Concurrent jurisdiction Over State Offenses" provides that the Pequot Tribal Police Department shall exercise "concurrent authority with law enforcement officers of the State of Connecticut to make arrests for violation of criminal laws of the State...." This section also provides:

> "however, that persons arrested by officers of the Mashantucket Pequot Tribal Police Department for such violations of criminal laws of the State of Connecticut shall be transferred as promptly as may be feasible to the jurisdiction of State law enforcement officers and the Mashantucket Pequot Tribal Police Department shall comply with all reasonable requirements of State law enforcement officers and agencies in order to assist in the prosecution of such offenders under the laws of the State of Connecticut."

This is nothing to indicate a claim that the jurisdiction of the State was limited to a particular area of the

reservation or that Indians were excluded from the application.

The preamble to the ordinance mentions the Gaming Compact with the State. This document, approved by the State and the tribe filed with the Federal Government also indicates a recognition that State criminal law applied on the reservation without restriction. Section 4(a) entitled "State criminal jurisdiction" contains the following sentence:

> "The State of Connecticut shall also have jurisdiction to enforce all other criminal laws of the State which are consistent with the provisions of this Compact on the Reservation, including enforcement within the gaming facilities."

The phrase "including enforcement within the gaming facilities" indicates an understanding that state criminal laws are in force throughout the reservation.

Subsection (c) entitled "Powers of Tribal Law Enforcement Officers" indicates an understanding on the part of the tribe that its police officers have concurrent

authority with "law enforcement officers of the State of Connecticut" to enforce the law and make arrests for "violation of applicable criminal laws of the State." The section also provides for the transfers of persons arrested by tribal law enforcement officers to jurisdiction of the State.

The ordinance and the compact, both promulgated by the tribe to implement the Settlement Act shortly after its enactment clearly indicate the Tribe's then understanding that State criminal law applied throughout the Reservation without restriction.

Resolution No. E. 111 93-02 of January 11, 1993 in which the Tribal Council voted to exercise Tribal sovereignty to the maximum extent possible and to retain criminal (and civil) jurisdiction within the boundaries of the reservation to the maximum extent possible is not persuasive.

This expression of tribal intent comes well after the prior votes and after the conclusion of State v. Dagett and start of this action.

It is significant to note that there is no mention of Federal criminal jurisdiction in any of the Tribal Council votes.

IV

A Congressional decision to place criminal jurisdiction over the Reservation with the state was logical and in accordance with the general concern of the government for the protection of people on the reservation.

Section 1751 of the Settlement Act contained certain findings made by Congress in connection with the establishment of the reservation. Subsection (f) of Section 1751 included the following:

> The State of Connecticut has provided special services to the members of the Western Pequot Tribe residing within its borders. The United States has provided few, if any, special services to the Western Pequot Tribe and has denied that is

had jurisdiction over or responsibility for said Tribe. In view of the provisions of land by the State of Connecticut, the provision of paved roadways by the State of Connecticut, and the provisions of special services by the State of Connecticut without being required to do so by Federal law, it is the intent of Congress that the State of Connecticut not be required to otherwise contribute directly to this claims settlement.

This Act does not define "special services" or otherwise state what Congress meant by the term. It is logical to conclude, however, that such special services included the protection of the criminal laws of the State afforded to all persons including Indians on the Reservation.

In Bryan v. Itasca Cty. Minnesota, supra 379-80 the United State Supreme Court reviewed the concern of Congress in enacting Pub.L. No. 280 which allowed criminal jurisdiction over Indians on reservations to be ransferred to the State. The court reviewed problems encountered with Indian and Federal Courts handling

such matters and included in such the following:

"As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves. In many States, tribes are not adequately organized to perform that function; consequently there has been created a hiatus in law-enforcement authority that could be best remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility." H.R.Rep.No.848, 83rd Cong., 1st Sess., 5-6 (1953), U.S. Code Cong. & Admin.News 1953, pp. 2409, 2411-2412.

At the time the Settlement Act became law, the tribe consisted of 245 enrolled members with 175 then living on a Reservation of 1,240 acres in rural Connecticut.

There is nothing to indicate that at that time the tribe was in any way organized to maintain law and order on the reservation or to afford to anyone the protection of a court system. This was recognized by the tribe in the preamble to the ordinance of November 20, 1991 when

the tribal council stated:

"...this Council has determined that there are presently insufficient law enforcement resources available to protect the public order and public safety on the Mashantucket Pequot Reservation;..."

Under such circumstances it was logical for Congress to continue criminal jurisdiction over the reservation, including Indians on the reservation, in the State of Connecticut and the State of Connecticut agreed to provide services under such jurisdiction by the Special Act NO 82-31, an act to implement the settlement of the Mashantucket Pequot Indian claims.

Accordingly, the motion to dismiss is denied.

Purtill

Although it could have been better drafted, a careful reading of § 1755 discloses the following:

First: It's purpose was to grant to the State jurisdiction over criminal (§1321(a)) matters. If it did not have this purpose, there would be no need for this section in the Act.

Second: It granted such jurisdiction to the maximum extent allowed in §1321(a), i.e., over the entire reservation, of all state crimes, for all persons, "to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of the State shall have the same force and effect within such [reservation] as they have elsewhere within the State."

Third: It deleted any further consent requirement for both the Tribe and the State. Both parties negotiated the settlement which was finally approved by

Congress and signed by the President. In the Senate Report and in the Act itself, Congress stated the need to have a single body represent the tribe. S. Rep. 98-222, supra at 17, and 25 U.S.C. 1752(1). Congress recognized "the Mashantucket Pequot Tribal Council as the political body representing the Tribe and is intended to make it clear that Congress recognized the Council as having the sole authority to act on the Tribe's behalf in the settlement." S. Rep. 98-222, supra at 10 (App. B.)

Here, defendant does not dispute that the Tribe was without law enforcement personnel between 1983 and 1990, nor any tribal criminal ordinance. Certainly it had none when in 1982 and 1983

(2)

No. 95-523

Supreme Court, U.S.
FILED
OCT 31 1995
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In The
Supreme Court Of The United States
October Term, 1995

LAKE SPEARS,
Petitioner

v.

STATE OF CONNECTICUT,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

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QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court of the State of Connecticut correctly decided that the Mashantucket Pequot Indian Land Claims Settlement Act of 1983 was a grant by Congress of the continuation of criminal jurisdiction over Indians on the Reservation that the State had prior to the enactment of that Act, which Act also granted federal status to this state recognized Tribe?

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PARTIES TO PROCEEDINGS BELOW

Respondent agrees with Petitioner's list. Pet. p. 1

OPINION BELOW

Respondent agrees with Petitioner's statement.

JURISDICTION

Respondent agrees with Petitioner's statement.

STATUTORY PROVISIONS INVOLVED

Respondent agrees with Petitioner's statement except that the official title of 25 U.S.C. §1755 is "State jurisdiction over reservation" (Emphasis applied)

STATEMENT OF THE CASE

The Respondent agrees with the Petitioner's STATEMENT OF THE CASE (Pet. pp. 3-6) except that both the Office of the Attorney General of the State of Connecticut and the United States Attorney for the District of Connecticut were granted amicus status and each did, in fact, file a brief supporting the claim of the State's Attorney that the State had criminal jurisdiction. The Tribe was granted amicus status and filed a brief supporting the claim of Petitioner.

REASONS FOR DENIAL OF THE WRIT

This case does not have significance beyond the private interest of the parties. It sets no precedent, and the issue is unlikely to recur. There is no important issue of federal law. Finally, the ruling of the Connecticut Supreme Court was based on, and not in conflict with, decided case law, was accurate and correct, and the right result was reached.

I

THE LAND CLAIMS SETTLEMENT ACT CONFERRED CRIMINAL JURISDICTION IN THE STATE

Prior to 1983, the Mashantucket Pequot Indian Tribe (hereafter "Tribe") was not federally recognized. In 1976 the Tribe brought a civil action claiming title to certain public and private lands in Ledyard, Connecticut adjacent to its state reservation. Only a few tribal members lived on the reservation; the Tribe had no law enforcement agency or courts. In 1983 the Mashantucket Indian Land Claims Settlement Act (hereafter Settlement Act) codified at 25 U.S.C. §§1751-1760 was

enacted into law. The Settlement Act reflected an agreement by the parties to the litigation to resolve the Tribe's claims and to eliminate the cloud on titles to the lands. As part of the Act, Congress specifically recognized the Tribal Council, who had represented the Tribe in the civil action and before Congress, as the official tribal representative; and that the Tribe agreed to the terms of the Act. See 25 U.S.C. §1751(d) and (e). State v. Spears, 234 Conn. 78 at 83-84 (1995).

Importantly, the Tribe first became federally recognized as part of and through the Act. At the same time, and as part of the agreement, Congress continued full state jurisdiction over the reservation. Section 6 of the Settlement Act, codified at 25 U.S.C. §1755 is entitled "STATE JURISDICTION OVER RESERVATION." That section provides in pertinent part, "...the

reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in..." (25 U.S.C. §1321). The extent or scope of jurisdiction provisions of §1321 relate to criminal offenses by or against Indians, and "the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the state." The Senate Select Committee's report on September 12, 1983 states, "Section 6 provides that the reservation of the...Tribe <u>is</u> subject to the full extent of State jurisdiction...the Tribe's reservation <u>has</u> this status notwithstanding Section 406 of the Indian Civil Rights Act" (requirement of tribal consent). This language reflects the clear intent of Congress that the full criminal jurisdiction which the state had over the reservation be continued upon the Tribe

first becoming federally recognized and the land becoming "Indian Country".

Contrary to Petitioner's claim (Pet. p. 10), the Connecticut Supreme Court did not find "an ambiguity in the statute". Petitioner gives no citation for this statement, because none exists. In fact, that Court stated that as a threshold matter it would consider whether §1755 is ambiguous. 234 Conn. at 86. The Court found that since §1755 referred to another statute (25 U.S.C. §1321) it must look at that statute to interpret §1755. The Court then carefully examined the legislative history of the Act, applied principles of statutory construction, and in effect determined that only the scope or extent portion of §1321 was incorporated by reference in §1755. It thus correctly concluded that §1755 was not ambiguous. After carefully noting that the history of

the Settlement Act provided that the reservation is subject to the full extent of state jurisdiction, and that it has this status, notwithstanding the "consent" provisions of §1321, the Court concluded that the Settlement Act itself was a grant by Congress of jurisdiction to the state without any further action by the Tribe or State being required. It was self-executing. 234 Conn. at 93. In fact, the reference to §1321 was only to set forth the extent of the jurisdiction granted, not the means of acquiring it. It should also be noted that even if some tribal consent was required, such was given by the Tribe when it entered the agreement leading to the enactment of the Settlement Act.

The decision of the Connecticut Supreme Court relies upon and is consistent with the decisions of this Court. In Negonsott v. Samuels, 113 S.Ct. 1119, 1122 (1993),

the Court said that in determining whether Congress granted criminal jurisdiction over Indians, "Our task is to give effect to the will of Congress...". An enactment should be read so as to give effect "to every clause and word of the statute." Id. Here, if its purpose were not to confer jurisdiction, §1755 would have no meaning, or at least be redundant. While statutes passed for the benefit of Indian Tribes are to be liberally construed in favor of Indians, this means for the benefit of the tribes, not individual Indian defendants. Id. 1123-24. Here, as in Negonsott, at the time of the Settlement Act there were no tribal police or courts, and continuing criminal jurisdiction in the state was clearly a benefit to the Tribe. Other important cases considered were Bryan v. Itasca County, 96 S.Ct. 2102 (1976); Kennerly v. District Court, 91 S.Ct. 480 (1971).

II

THE GENERAL PROVISIONS OF PUBLIC LAW 280 DO NOT APPLY HERE

Although the Connecticut Supreme Court did not directly consider or decide this issue, since the Petitioner relies heavily on the consent provisions, 25 U.S.C. §1321 (Public Law 280), it must be pointed out that that law has no application to this case, i.e., to the Mashantucket Reservation.

What is now the provision for the *acquisition* of state jurisdiction over federally recognized tribes has become known as Public Law 280. (P.L.280). See Goldberg, Public Law 280: The Limits Of State Jurisdiction Over Reservation Indians. 22 U.C.L.A. Law Rev. 575 (1975) (hereafter, Goldberg, P.L. 280). It was first enacted in 1953, and amended in 1968, allowing states to assume jurisdiction over

then existing federally recognized tribes and reservations. Historically, when the United States first came into existence there were many Indian tribes outside the land area occupied by the original colonies. It was decided by our founding fathers that, as to those tribes, the Federal Government could best deal with them and protect them. Thus, the Federal Government was given the power over them. Many tribes were resettled to the west in "Indian Country" on reservations. The Government entered treaties with and later enacted laws relating to such tribes. Eight western states, as a condition to admission to the Union, were required to have disclaimers of jurisdiction in their constitutions over the Indian reservations which would be in their territorial boundaries. Under P.L. 280 as first enacted, five (5) of those states were

required to accept jurisdiction. These were known as the mandatory states. Other states, known as optional, were permitted to acquire jurisdiction. But this related to the jurisdiction that the Federal Government, not the state, had over the existing federally recognized tribal reservations. As the Supreme Court noted in Washington v. Confederated Tribes of the Yakima Nation, 99 S. Ct. 740, 755-56 (1979), the history of P.L. 280 reflects congressional concern over law and order problems on (federal) Indian reservations and the financial burdens of *continued* federal jurisdictional responsibility on Indian lands. The Act was intended to facilitate, not impede, the *transfer* of jurisdictional responsibilities to the states. The Act itself, §1321, provides in part:

"The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian Country situated within such state..."(Emphasis applied).

Similar language is used in §1322 (civil jurisdiction).

It is thus clear that if the state exercised jurisdiction prior to 1953 and 1968, the Act would have no application to such state. See Rosebud Sioux Tribe v. State of South Dakota, 900 F.2d 1164, 1167 (1990) (P.L. 280 applies only to states not having jurisdiction). There is nothing in the language or legislative history of P.L. 280 to indicate that it was meant to divest states of pre-existing and otherwise lawfully assumed jurisdiction. Three Affiliated Tribes v. Wold Engineering, 104 S.Ct. 2267, 2275 (1984). (Wold I).

The State of Connecticut has continuously exercised criminal

jurisdiction over the state tribes, including the Mashantucket Tribe, since Colonial times. The lack of federal jurisdiction over the Tribe was noted by President Reagan in his veto message of S. 366 and in §2(f) of S. 1499, the Settlement Act as finally enacted, 25 U.S.C. §1751(f).

In Bryan v. Itasca, supra at 2106-07, the Court stated that the primary concern of Congress in enacting P.L. 280 was with the problem of lawlessness on certain Indian reservations and the absence of adequate tribal institutions for law enforcement. Thus, the provision for *state criminal jurisdiction* over offenses committed by or against Indians on the reservation was the central focus of P.L. 280, citing Goldberg, P.L. 280, supra. In Washington v. Yakima, supra, 99 S.Ct. at 760, the Court noted that Congress passed P.L. 280 "not as a measure to benefit the

States, but to reduce the economic burdens associated with federal jurisdiction on reservations" and "to respond to a perceived hiatus in law enforcement protections available to tribal Indians...," citing Bryan, supra. In Rosebud Sioux, supra at 1170, the Court of Appeals, citing Yakima, listed these two items as major concerns reflected in the passage of P.L. 280.

The case of Three Affiliated Tribes v. Wold Engineering, 106 S.Ct. 2305 (1986) (Wold II) involved a federally recognized tribe. The Court pointed out that: a) P.L. 280 gave federal consent to the *assumption* of state civil and criminal jurisdiction over Indian Country (p. 2307); and b) such *assumption* of jurisdiction was intended to replace the ad hoc regulation of state jurisdiction over Indian Country with general legislation for "all affected

states" (p. 2310), citing Goldberg, P.L. 280. In Three Affiliated Tribes v. Wold (WOLD I), supra, the Court said, at p. 2275:

> "...Pub. L. 280 was intended to facilitate rather than to impede the transfer of jurisdictional authority to the States...Nothing in the language or legislative history of Pub. L. 280 indicates that it was meant to divest states of pre-existing and otherwise lawfully assumed jurisdiction..."

The Court, after emphasizing the word *assumption*, states that "the 1968 amendments did not displace jurisdiction previously assumed under Pub. L. 280, *much less jurisdiction assumed prior to* and apart from Pub. L. 280." (Emphasis applied).

Goldberg, P.L. 280, supra, is recognized as one of the leading treatises on the history, purpose, and effect of P.L. 280 and has often been cited by federal courts. A review of that article discloses many

statements and case citations that clearly state or imply that P.L. 280 was intended by Congress as a *transfer* of criminal jurisdiction from the federal to the state government, i.e., to take the jurisdiction that the federal government then had over federally recognized Indians in Indian Country and transfer all or part of that jurisdiction to the state.

Taking into account the above, i.e., 1) the language of the statute itself that it applies only to states *not having jurisdiction*; 2) the fact that Connecticut had criminal jurisdiction because the Tribe was not federally recognized in 1953 and 1968 when P.L. 280 was enacted; 3) the fact that P.L. 280 does not confer jurisdiction in the federal government, but provides the method of transfer of such then existing federal jurisdiction to the states; and 4) the fact that the condition of state

jurisdiction can be approved by Congress at the time a tribe becomes federally recognized (or thereafter), with or without the consent or agreement of the state and the tribe and absent any special election, it is evident that P.L. 280 does not apply to the Mashantucket Tribe.

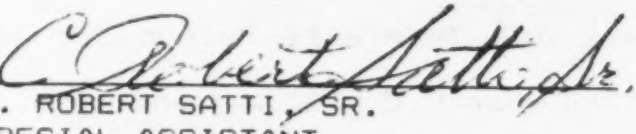
CONCLUSION

For the foregoing reasons, this Court should deny the petition for writ of certiorari.

Respectfully submitted,

RESPONDENT - STATE OF CONNECTICUT

KEVIN T. KANE, STATE'S ATTORNEY

BY 

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